

**SB 152** by **Grimsley**; (Identical to H 0363) Law Enforcement and Correctional Officers

**CS/SB 224** by **RI, Benacquisto (CO-INTRODUCERS) Latvala, Sobel, Flores, Gibson**; (Similar to H 0153) Nicotine Dispensing Devices

**SB 360** by **Bradley, Evers**; (Compare to H 0099) Sentencing for Controlled Substance Violations

**SB 384** by **Bradley**; Juvenile Sentencing

**SB 448** by **Evers**; (Identical to CS/H 0089) Threatened Use of Force

**SPB 7006** by **CJ**; Criminal Justice

417664   A   S   FAV   CJ, Evers   Delete L.16:   01/08 12:55 PM

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**CRIMINAL JUSTICE**  
**Senator Evers, Chair**  
**Senator Smith, Vice Chair**

**MEETING DATE:** Wednesday, January 8, 2014

**TIME:** 9:00 —11:00 a.m.

**PLACE:** Mallory Horne Committee Room, 37 Senate Office Building

**MEMBERS:** Senator Evers, Chair; Senator Smith, Vice Chair; Senators Altman, Bradley, Dean, Gibson, and Simmons

TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
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**Senate Confirmation Hearing:** A public hearing will be held for consideration of the below-named executive appointment to the office indicated.

**Secretary of Corrections**

1	Crews, Michael D. ()	Pleasure of Governor	Recommend Confirm Yeas 5 Nays 0
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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
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2	<b>SB 152</b> Grimsley (Identical H 363)	Law Enforcement and Correctional Officers; Authorizing certain law enforcement and correctional officers to administer oaths through electronic means; providing requirements, etc.	Temporarily Postponed
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CJ 01/08/2014 Temporarily Postponed  
JU

3	<b>CS/SB 224</b> Regulated Industries / Benacquisto (Similar H 153, Compare H 169)	Nicotine Dispensing Devices; Prohibiting the gift of sample nicotine dispensing devices to persons under 18 years of age; prohibiting the selling, delivering, bartering, furnishing, or giving of nicotine dispensing devices to persons under 18 years of age, to which penalties apply; prohibiting persons under 18 years of age from possessing, purchasing, or misrepresenting their age or military service to purchase nicotine dispensing devices; requiring certain signage where a dealer sells nicotine dispensing devices, etc.	Favorable Yeas 5 Nays 0
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RI 11/07/2013 Fav/CS  
CJ 01/08/2014 Favorable  
ACJ  
AP

**COMMITTEE MEETING EXPANDED AGENDA**

Criminal Justice

Wednesday, January 8, 2014, 9:00 —11:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>SB 360</b> Bradley / Evers (Compare H 99)	Sentencing for Controlled Substance Violations; Providing that a person who knowingly sells, purchases, manufactures, delivers, or brings into this state specified quantities of oxycodone or hydrocodone, or who is knowingly in actual or constructive possession of specified quantities of oxycodone or hydrocodone, commits the offense of trafficking in illegal prescription drugs, a felony of the first degree; providing criminal penalties, etc.  CJ 01/08/2014 Favorable ACJ AP	Favorable Yeas 5 Nays 0
5	<b>SB 384</b> Bradley	Juvenile Sentencing; Providing criminal sentences applicable to a person who was under the age of 18 years at the time the offense was committed; requiring a judge to consider certain factors before determining if life imprisonment is an appropriate sentence for a homicide defendant; providing for review of sentences of certain offenders who were under the age of 18 at the time of the offense, etc.  CJ 01/08/2014 Favorable JU ACJ AP	Favorable Yeas 4 Nays 1
6	<b>SB 448</b> Evers (Identical CS/H 89, Compare S 438)	Threatened Use of Force; Applying provisions relating to the use of force in defense of persons to the threatened use of force; applying presumption relating to the use of deadly force to the threatened use of deadly force in the defense of a residence and similar circumstances; applying immunity provisions that relate to the use of force to the threatened use of force; providing that a person is not justified in the threatened use of force to resist an arrest by a law enforcement officer, etc.  CJ 01/08/2014 Favorable JU RC	Favorable Yeas 5 Nays 0
Consideration of proposed committee bill:			
7	<b>SPB 7006</b>	Criminal Justice; Requiring the Department of Corrections to verify the authenticity of certain court orders before releasing a person from incarceration, etc.	Submitted as Committee Bill Yeas 5 Nays 0
Other Related Meeting Documents			

The Florida Senate  
**Committee Notice Of Hearing**

IN THE FLORIDA SENATE  
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of  
Michael D. Crews  
Secretary of Corrections


**NOTICE OF HEARING**

TO: Secretary Michael D. Crews

YOU ARE HEREBY NOTIFIED that the Committee on Criminal Justice of the Florida Senate will conduct a hearing on your executive appointment on Wednesday, January 08, 2014, in the Mallory Horne Committee Room, 37 Senate Office Building, commencing at 9:00 a.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.  
DATED this the 20th day of December, 2013

Committee on Criminal Justice

  
\_\_\_\_\_  
Senator Greg Evers  
As Chair and by authority of the committee

cc: Members, Committee on Criminal Justice  
Office of the Sergeant at Arms

500

**STATE OF FLORIDA  
DEPARTMENT OF STATE  
Division of Elections**

I, Ken Detzner, Secretary of State,  
do hereby certify that

***Michael D. Crews***

is duly appointed

**Secretary,  
Department of Corrections**

for a term beginning on the  
Sixteenth day of May, A.D., 2013,  
to serve at the pleasure of the Governor  
and is subject to be confirmed by the Senate  
during the next regular session of the Legislature.



*Given under my hand and the Great Seal of the  
State of Florida, at Tallahassee, the Capital, this  
the Eleventh day of July, A.D., 2013.*

*Ken Detzner*

Secretary of State

DSDE 99 (3/03)

The original document has a reflective line mark in paper. Hold at an angle to view when checking.

# OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

STATE OF FLORIDA

County of LEON

RECEIVED  
13 JUL 11 PM 1:38

DIVISION OF ELECTIONS  
SECRETARY OF STATE

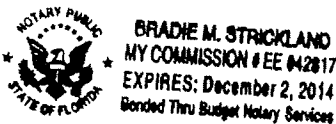
I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

SECRETARY DEPARTMENT OF CORRECTIONS  
(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

[Signature]  
Signature  
Sworn to and subscribed before me this 1<sup>st</sup> day of July, 2013.



Bradie M. Strickland  
Signature of Officer Administering Oath or of Notary Public

Bradie M. Strickland  
Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known ☒ OR Produced Identification ☐

Type of Identification Produced \_\_\_\_\_

## ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: ☐ Home ☒ Office

Street or Post Office Box

City, State, Zip Code

MICHAEL D. CREWS  
Print name as you desire commission issued

[Signature]  
Signature



**RICK SCOTT**  
GOVERNOR

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13 MAY 22 AM 10:09  
DIVISION OF ELECTIONS  
SECRETARY OF STATE

May 17, 2013

The Honorable Kenneth W. Detzner  
Secretary of State  
State of Florida  
R. A. Gray Building, Room 316  
500 South Bronough Street  
Tallahassee, Florida 32399-0250

Dear Secretary Detzner:

Please be advised I have made the following reappointment under the provisions of Section 1001.71, Florida Statutes:

Mr. Michael D. Crews

as Secretary of the Department of Corrections, subject to confirmation by the Senate. This appointment is effective May 16, 2013, for a term ending at the pleasure of the Governor.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Scott".

Rick Scott  
Governor

RS/vh

# QUESTIONNAIRE FOR GUBERNATORIAL APPOINTMENTS

The information from this questionnaire will be used by the Governor's office and, where applicable, The Florida Senate in considering action on your confirmation. The questionnaire MUST BE COMPLETED IN FULL. Answer "none" or "not applicable" where appropriate. **Please type or print in black ink.**

6/13/13

1. Name: Mr. Crews Michael Daun  
MR./MRS./MS./DR. LAST FIRST MIDDLE/MAIDEN

2. Business Address: \_\_\_\_\_  
STREET OFFICE #  
 \_\_\_\_\_  
POST OFFICE BOX STATE ZIP CODE AREA CODE/PHONE NUMBER

3. Residence Address: 1 \_\_\_\_\_  
STREET CITY COUNTY  
 \_\_\_\_\_  
POST OFFICE BOX STATE ZIP CODE AREA CODE/PHONE NUMBER

Specify the preferred mailing address: Business ☒ Residence ☐ Fax # (850) 487-7896

4. A. List all your places of residence for the last ten (10) years.

ADDRESS	CITY & STATE	FROM	TO
			Present

B. List all your former and current residences outside of Florida that you have maintained at any time during adulthood.

ADDRESS	CITY & STATE	FROM	TO

5. Date of Birth: 02/16/61 Place of Birth: Marianna, Florida  
 6. Social Security Number: \_\_\_\_\_  
 7. Driver License Number: \_\_\_\_\_ Issuing State: Florida

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OFFICE OF THE  
GOVERNOR OF FLORIDA



8. Have you ever used or been known by any other legal name? Yes ☐ No ☒ If "Yes," list and explain.

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9. Are you a United States citizen? Yes ☒ No ☐ If "No" explain:

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If you are a naturalized citizen, date of naturalization: \_\_\_\_\_

10. Since what year have you been a continuous resident of Florida? 1961

11. Are you a registered Florida voter? Yes ☒ No ☐ If "Yes" list:

A. County of registration: Leon

B. Current party affiliation: Democrat

12. Education

A. High School: Marianna High School, Marianna, Florida

Year Graduated: 1979

(NAME AND LOCATION)

- B. List all postsecondary educational institutions attended:

NAME & LOCATION

DATES ATTENDED

CERTIFICATES/DEGREES RECEIVED

George C. Wallace Community College 1979-1981

Florida State University, Tallahassee, FL 1981-1983

BS-Criminology

13. Are you or have you ever been a member of the armed forces of the United States? Yes ☐ No ☒ If "Yes" list:

A. Dates of service: \_\_\_\_\_

B. Branch or component: \_\_\_\_\_

C. Date & type of discharge: \_\_\_\_\_

14. Have you ever been arrested, charged, or indicted for violation of any federal, state, county, or municipal law, regulation, or ordinance? (Exclude traffic violations for which a fine or civil penalty of \$150 or less was paid.) If "Yes" give details:

DATE

PLACE

NATURE

DISPOSITION

None

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15. Concerning your current employer and for all of your employment during the last ten years, list your employer's name, business address, type of business, occupation or job title, and period(s) of employment.

EMPLOYER'S NAME & ADDRESS	TYPE OF BUSINESS	OCCUPATION/JOB TITLE	PERIOD OF EMPLOYMENT
Dept. of Corrections	State Corrections	Secretary	12/17/12 - Present
Dept. of Corrections	State Corrections	Deputy Secretary	11/28/11-12/17/12
FL Dept. of Law Enforcement	Law Enforcement Director/Professionalism Program		10/2/87-11/28/11

16. Have you ever been employed by any state, district, or local governmental agency in Florida? Yes ☒ No ☐  
If "Yes", identify the position(s), the name(s) of the employing agency, and the period(s) of employment:

POSITION	EMPLOYING AGENCY	PERIOD OF EMPLOYMENT
Secretary 12/17/12 to present	Department of Corrections	Deputy Secretary 11/20/11-12/17/12
Professionalism Program Director	FL Dept. of Law Enforcement	10/87 - 11/2011
Auxiliary Law Enforcement	Florida Wildlife Commission	1993-95
Corrections and Correctional Probation Officer	Dept. of Corrections	7/84- 10/87

17. A. State your experiences and interests or elements of your personal history that qualify you for this appointment.  
Served as the Director of the FDLE Professionalism Program 2004-11 which served as staff with the Criminal Justice Standards and Training Commission.

- B. Have you received any degree(s), professional certification(s), or designations(s) related to the subject matter of this appointment? Yes ☒ No ☐ If "Yes", list:

BS-Criminology

Corrections Officer

Correctional Probation Officer

Law Enforcement Officer

- C. Have you received any awards or recognitions relating to the subject matter of this appointment? Yes ☐ No ☒  
If "Yes", list:

D. Identify all association memberships and association offices held by you that relate to this appointment:

American Correctional Association

Florida Police Chiefs Association

18. Do you currently hold an office or position (appointive, civil service, or other) with the federal or any foreign government?  
Yes ☐ No ☒ If "Yes", list:

19. A. Have you ever been elected or appointed to any public office in this state? Yes ☒ No ☐ If "Yes", state the office title, date of election or appointment, term of office, and level of government (city, county, district, state, federal):

OFFICE TITLE	DATE OF ELECTION OR APPOINTMENT	TERM OF OFFICE	LEVEL OF GOVERNMENT
Secretary	12/17/12	Governor's Discretion	State

B. If your service was on an appointed board(s), committee(s), or council(s):

- (1) How frequently were meetings scheduled: \_\_\_\_\_  
(2) If you missed any of the regularly scheduled meetings, state the number of meetings you attended, the number you missed, and the reasons(s) for your absence(s).

MEETINGS ATTENDED	MEETINGS MISSED	REASON FOR ABSENCE

20. Has probable cause ever been found that you were in violation of the Code of Ethics for Public Officers and Employees, Part III, Chapter 112, F.S.? Yes ☐ No ☒ If "Yes", give details:

DATE	NATURE OF VIOLATION	DISPOSITION

21. Have you ever been suspended from any office by the Governor of the State of Florida? Yes ☐ No ☒ If "Yes", list:

A. Title of office: Secretary C. Reason for suspension: \_\_\_\_\_  
B. Date of suspension: \_\_\_\_\_ D. Result: Reinstated ☐ Removed ☐ Resigned ☐

22. Have you previously been appointed to any office that required confirmation by the Florida Senate? Yes ☒ No ☐  
If "Yes", list:

A. Title of Office: Secretary

B. Term of Appointment: Discretion of Governor

C. Confirmation results: Not agendaed for Senate consideration

23. Have you ever been refused a fidelity, surety, performance, or other bond? Yes ☐ No ☒ If "Yes", explain:

24. Have you held or do you hold an occupational or professional license or certificate in the State of Florida? Yes ☒ No ☐  
If "Yes", provide the title and number, original issue date, and issuing authority. If any disciplinary action (fine, probation, suspension, revocation, disbarment) has ever been taken against you by the issuing authority, state the type and date of the action taken:

<u>LICENSE/CERTIFICATE</u>	<u>ORIGINAL</u>	<u>ISSUING AUTHORITY</u>	<u>DISCIPLINARY ACTION/DATE</u>
<u>TITLE &amp; NUMBER</u>	<u>ISSUE DATE</u>		
Corrections Officer #64255	10/15/84	Criminal Justice Standards and Training Commission	None
Correctional Probation Officer	10/1/86/Grandfathered	Criminal Justice Standards and Training Commission	None
Law Enforcement Officer #137687	5/19/93	Criminal Justice Standards and Training Commission	None

25. A. Have you, or businesses of which you have been an owner, officer, or employee, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes ☐ No ☒ If "Yes", explain:

<u>NAME OF BUSINESS</u>	<u>YOUR RELATIONSHIP TO BUSINESS</u>	<u>BUSINESS' RELATIONSHIP TO AGENCY</u>
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- B. Have members of your immediate family (spouse, child, parents(s), siblings(s)), or businesses of which members of your immediate family have been owners, officers, or employees, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes ☐ No ☒ If "Yes", explain:

<u>NAME OF BUSINESS</u>	<u>FAMILY MEMBER'S</u>	<u>FAMILY MEMBER'S</u>	<u>BUSINESS' RELATIONSHIP</u>
<u>RELATIONSHIP TO YOU</u>	<u>RELATIONSHIP TO BUSINESS</u>	<u>TO AGENCY</u>	

26. Have you ever been a registered lobbyist or have you lobbied at any level of government at any time during the past five (5) years? Yes ☒ No ☐

- A. Did you receive any compensation other than reimbursement for expenses? Yes ☐ No ☒

- B. Name of agency or entity you lobbied and the principal(s) you represented:

<u>AGENCY LOBBIED</u>	<u>PRINCIPAL REPRESENTED</u>
Department of Corrections	Department of Corrections

27. List three persons who have known you well within the past five (5) years. Include a current, complete address and telephone number. Exclude your relatives and members of the Florida Senate.

NAME	MAILING ADDRESS	ZIP CODE	AREA CODE/PHONE NUMBER
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Wayne Quinsey

Juanita Chastain

Chip Brady

28. Name any business, professional, occupational, civic, or fraternal organizations(s) of which you are now a member, or of which you have been a member during the past five (5) years, the organization address(es), and date(s) of your membership(s).

NAME	MAILING ADDRESS	OFFICE(S) HELD & TERM	DATE(S) OF MEMBERSHIP
Florida Police Chiefs	924 N. Gadsden Street, Tallahassee	None	1997-Present
American Correctional Assoc.	206 North Washington St. Suite 200, Alexandria, VA	None	2012
International Assoc. of Directors of Law Enforcement Standards and Training			2002/11
3287 Tasa Drive, Meridian, ID		Vice-President (1) Year	
		President (15) months	

29. Do you know of any reason why you will not be able to attend fully to the duties of the office or position to which you have been or will be appointed? Yes ☐ No ☒ If "Yes", explain:

30. If required by law or administrative rule, will you file financial disclosure statements? Yes ☒ No ☐

## MEMORANDUM

AS A GENERAL MATTER, APPLICATIONS FOR ALL POSITIONS WITHIN STATE GOVERNMENT ARE PUBLIC RECORDS, WHICH MAY BE VIEWED BY ANYONE UPON REQUEST. HOWEVER, THERE ARE SOME EXEMPTIONS FROM THE PUBLIC RECORDS LAW FOR IDENTIFYING INFORMATION RELATING TO PAST AND PRESENT LAW ENFORCEMENT OFFICERS AND THEIR FAMILIES, VICTIMS OF CERTAIN CRIMES, ETC...IF YOU BELIEVE AN EXEMPTION FROM THE PUBLIC RECORDS LAW APPLIES TO YOUR SUBMISSION, PLEASE CHECK THIS BOX.



Yes, I assert that identifying information provided in this application should be excluded from inspection under Public Records Law. Please indicate what section of Florida Statutes provides this in your particular situation.

Certified Law Enforcement Officer

IF YOU NEED ADDITIONAL GUIDANCE AS TO THE APPLICABILITY OF ANY PUBLIC RECORDS LAW EXEMPTION TO YOUR SITUATION, PLEASE CONTACT THE OFFICE OF THE ATTORNEY GENERAL.

The Office of the Attorney General  
PL-01, The Capitol  
Tallahassee, Florida 32399  
(850) 245-0158

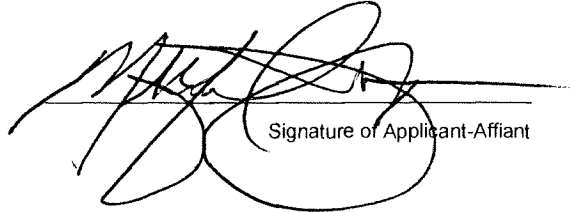
CERTIFICATION

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DEPARTMENT OF STATE  
2013 JUN 21 PM 4:20

STATE OF FLORIDA, COUNTY OF LEON

DIVISION OF ELECTIONS  
TALLAHASSEE, FL

Before me, the undersigned Notary Public of Florida, personally appeared MICHAELA CREWS, who, after being duly sworn, say: (1) that he/she has carefully and personally prepared or read the answers to the foregoing questions; (2) that the information contained in said answers is complete and true; and (3) that he/she will, as an appointee, fully support the Constitutions of the United States and of the State of Florida.

  
Signature of Applicant-Affiant

Sworn to and subscribed before me  
this 13<sup>th</sup> day of June, 2013

Bradie M. Strickland  
Signature of Notary Public-State of Florida



BRADIE M. STRICKLAND  
MY COMMISSION # EE 042817  
EXPIRES: December 2, 2014  
Bonded Thru Budget Notary Services

Bradie M. Strickland  
(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires: \_\_\_\_\_

Personally Known ☒ OR Produced Identification ☐

Type of Identification Produced \_\_\_\_\_

(seal)

The Florida Senate  
**COMMITTEE RECOMMENDATION ON  
EXECUTIVE APPOINTMENT**

**COMMITTEE:** Committee on Criminal Justice  
**MEETING DATE:** Wednesday, January 08, 2014  
**TIME:** 9:00 —11:00 a.m.  
**PLACE:** Mallory Horne Committee Room, 37 Senate Office Building

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**TO:** The Honorable Don Gaetz, President

**FROM:** Committee on Criminal Justice

The committee was referred the following executive appointment subject to confirmation by the Senate:

**Office:** Secretary of Corrections

**Appointee:** Crews, Michael D.

**Term:** 5/16/2013-Pleasure of Governor

After inquiry and due consideration, the committee recommends that the Senate **confirm** the aforesaid executive appointment made by the Governor.



THE FLORIDA SENATE

# COMMITTEE WITNESS OATH

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**CHAIR:**

**Please raise your right hand and be sworn in as a witness.**

**Do you swear or affirm that the evidence you are about to give will be the truth, the whole truth, and nothing but the truth?**

**WITNESS'S NAME:** Michael D. Crews

**ANSWER:** I do.

Pursuant to §90.605(1), *Florida Statutes*: "The witness's answer shall be noted in the record."

**COMMITTEE NAME:** Senate Criminal Justice Committee

**DATE:** January 8, 2014

✓

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-8-17

Meeting Date

Topic Confirmation

Name Michael D. Crews

Job Title Secretary

Address 501 S. Calhoun St.  
Street

Tallahassee FL 32399  
City State Zip

Bill Number \_\_\_\_\_

Amendment Barcode \_\_\_\_\_ (if applicable)

Amendment Barcode \_\_\_\_\_ (if applicable)

Phone 850-717-3030

E-mail CREWS, Mike@mail.de.state.fl.us

Speaking: ☐ For ☐ Against ☐ Information

Representing Confirmation

Appearing at request of Chair: ☒ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/20/11)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Criminal Justice

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BILL: SB 152

INTRODUCER: Senator Grimsley

SUBJECT: Law Enforcement and Correctional Officers

DATE: January 3, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	<b>Pre-meeting</b>
2.			JU	

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## **I. Summary:**

SB 152 eliminates the need for a law enforcement officer to be in the actual presence of the person they are swearing in under the officer's authority to administer an oath found in s. 117.10, F.S. Under s. 117.10, F.S., law enforcement officers, correctional officers, correctional probation officers, traffic accident investigation officers, and traffic infraction enforcement officers are currently authorized to administer oaths when engaged in the performance of their official duties, but s. 117.10, F.S., does not specify whether the officer administering the oath needs to be in the presence of the person taking the oath.

The bill adds law enforcement officers, correctional officers, correctional probation officers, traffic accident investigation officers, and traffic infraction enforcement officers to the list of people who are currently authorized to verify documents under ss. 92.50 and 92.525, F.S. Document verification requires the affiant to sign or execute the document and state under oath, or by writing, that the facts or matters contained in the document are true.<sup>1</sup>

The bill provides that oath administration or document verification by an officer could be accomplished in the presence of the affiant or completely electronically under the procedure described in s. 117.10, F.S., as amended by the bill.

## **II. Present Situation:**

### **Law Enforcement Administering Oaths**

Under current law, law enforcement officers, correctional officers, correctional probation officers, traffic accident investigation officers, and traffic infraction enforcement officers are authorized to administer oaths when engaged in the performance of their official duties.<sup>2</sup>

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<sup>1</sup> s. 92.525(3), F.S.

<sup>2</sup> Section 117.10, F.S.

The origin of officers' authority to administer oaths is found in Chapter 83-147, Laws of Florida, which created that authority for limited purposes.<sup>3</sup> Following its enactment, the Attorney General opined that "[t]he power to administer oaths under Ch. 83-147 extends only to sworn statements of witnesses taken during the law enforcement officer's informal gathering, authentication and preservation of information during an inquiry into the facts...an officer is not empowered to take the sworn statement of another officer or witness for the sole intended purpose of using that document to establish probable cause or to serve as a complaint for direct submission to a magistrate or court..."<sup>4</sup>

The following year, 1984, the Legislature created s. 117.10, F.S., which read:

Law enforcement officers and correctional officers, as defined in s. 943.10, are notaries public for the purpose of notarizing, certifying, or attesting to documents in connection with the performance of official duties. Sections 117.01, 117.04, 117.05, 117.07, and 117.08 shall not apply to the provisions of this section. An officer may not notarize his own signature.<sup>5</sup>

Section 117.10, F.S., has been amended over the last 30 years to include correctional probation officers, traffic accident investigation officers, and traffic infraction enforcement officers. The reference to officers being notaries public for various purposes has been deleted so that the statute now simply states that the listed officers "are authorized to administer oaths when engaged in the performance of official duties."<sup>6</sup>

It is not uncommon for law enforcement agencies to utilize officers for the purpose of verifying signatures, both electronic and actual, on official documents such as probable cause affidavits, reports, or sworn complaints. Under the authority of s. 117.10, F.S., one officer may place another under oath and be a witness to the latter's having sworn to and subscribed (signed) an official document.

Because so much business is conducted by computer, the officer who is swearing in the other officer and witnessing the signature is quite often witnessing the application of an electronic signature rather than an actual one. The convenience of computer-generated documents is reported to be somewhat diminished, because one officer must still meet with another to lawfully complete the "sworn signature" requirements where one officer gives the oath and witnesses the sworn electronic signature of the other.<sup>7</sup>

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<sup>3</sup> "All law enforcement and correctional officers as defined in s. 943.10 may administer oaths, to witnesses, in connection with the taking of a sworn statement during a criminal investigation..." s. 925.095, F.S. (1983).

<sup>4</sup> Fla. AGO 83-85, in response to a question from the Havana, Florida, Chief of Police regarding whether law enforcement officers were authorized under Ch. 83-147, L.O.F. to administer oaths to, and attest to the signatures of, persons (presumably other law enforcement officers) sworn complaints or probable cause affidavits.

<sup>5</sup> Chapter 84-87, L.O.F. which also repealed s. 925.095, F.S. (1983).

<sup>6</sup> s. 117.10, F.S.

<sup>7</sup> Telephone interview with Major Larry Williams, Polk County Sheriff's Office, December 19, 2013.

## **Verification of Documents**

The requirement that a document be verified means that it must be signed or executed by a person who must state under oath (or affirmation) that the facts or matters stated in the document are true, or words to that import or effect.<sup>8</sup>

Document verification may be accomplished by one of two methods:

- Under oath or affirmation taken or administered before an officer authorized under s. 92.50, F.S., to administer oaths. These officers are currently limited to any judge, clerk or deputy clerk of court, or any notary public; or
- The document may be verified by the signing of the written declaration set forth in subsection (2) of s. 92.525, F.S.

The above referenced written declaration states:

“Under penalties of perjury, I declare that I have read the foregoing [document] and that the facts stated in it are true,” followed by the signature of the person making the declaration, except when a verification on information or belief is permitted by law, in which case the words “to the best of my knowledge and belief” may be added.

The written declaration shall be printed or typed at the end of or immediately below the document being verified and above the signature of the person making the declaration.<sup>9</sup>

## **Perjury**

A person who knowingly makes a false declaration under s. 92.525(2), F.S., is subject to prosecution for the third degree felony crime of perjury by false written declaration.<sup>10</sup>

A person who knowingly makes a false statement under oath in regard to any material matter commits perjury, a first degree misdemeanor under s. 837.012, F.S.<sup>11</sup>

## **III. Effect of Proposed Changes:**

The bill eliminates the need for a law enforcement officer to be in the actual presence of the person they are swearing in (the affiant) under the officer’s authority to administer an oath found in s. 117.10, F.S.

The bill adds law enforcement officers, correctional officers, correctional probation officers, traffic accident investigation officers, and traffic infraction enforcement officers to the list of

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<sup>8</sup> s. 92.525(4)(c), F.S.

<sup>9</sup> s. 92.525(2), F.S.

<sup>10</sup> s. 92.525(3), F.S.

<sup>11</sup> “Whoever makes a false statement, which he or she does not believe to be true, under oath, not in an official proceeding, in regard to any material matter shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.”

people who are currently authorized to verify documents. The people (called “officers” in the current s. 92.525(1)(a), F.S.) who are currently authorized to verify documents under s. 92.525, F.S., are: judges, clerks, deputy clerks and notaries public.<sup>12</sup>

The bill provides that document verification by an officer could be accomplished in the presence of the affiant or completely electronically under the procedure described in s. 117.10, F.S., as amended by the bill. Judges, clerks and deputy clerks of court, and notaries public are restricted to giving an oath in person.<sup>13</sup>

The details surrounding the electronic oath administration and document verification procedure are somewhat unclear particularly with regard to electronic security measures that may be necessary in order to enforce related perjury laws. (see Technical Deficiencies section below for details).

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Law enforcement and correctional agencies may realize a financial benefit by passage of the bill as the effect should eliminate some costs and man-hours associated with the current restrictions on affixing sworn signatures to official documents.

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<sup>12</sup> s. 92.50, s. 92.525(1)(a), F.S.

<sup>13</sup> “Under oath or affirmation *taken or administered before* an officer authorized under s. 92.50 to administer oaths.” s. 92.525(1)(a), F.S. (emphasis added).

**VI. Technical Deficiencies:**

Lines 34-37 in the bill create a procedure whereby an officer can administer an oath by electronic means, however the procedure is somewhat unclear. It appears that the affiant will sign and transmit a document electronically, then the affiant will be issued an electronic receipt which indicates the date and time the (signed) document was submitted. Clarification regarding the following is suggested:

- To whom is the document being transmitted by the affiant (line 35);
- Is the document submitted to a different party subsequently (line 37);
- How and by whom is the electronic receipt issued (line 36);
- At what point during the process is the oath administered; and
- How will the signature of the affiant or the document itself be verifiable should either be called into question; should security measures be addressed in the bill.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 92.525 and 117.10.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

By Senator Grimsley

21-00266-14

2014152\_\_

1 A bill to be entitled  
 2 An act relating to law enforcement and correctional  
 3 officers; amending s. 92.525, F.S.; conforming a  
 4 provision to changes made by the act; making technical  
 5 changes; amending s. 117.10, F.S.; authorizing certain  
 6 law enforcement and correctional officers to  
 7 administer oaths through electronic means; providing  
 8 requirements; providing an effective date.  
 9  
 10 Be It Enacted by the Legislature of the State of Florida:  
 11  
 12 Section 1. Subsection (1) of section 92.525, Florida  
 13 Statutes, is amended to read:  
 14 92.525 Verification of documents; perjury by false written  
 15 declaration, penalty.—  
 16 (1) ~~If when it is~~ authorized or required by law, by rule of  
 17 an administrative agency, or by rule or court order ~~of court~~  
 18 that a document be verified by a person, the verification may be  
 19 accomplished in the following manner:  
 20 (a) Under oath or affirmation taken or administered before  
 21 an officer authorized under s. 92.50 or s. 117.10 to administer  
 22 oaths; or  
 23 (b) By the signing of the written declaration prescribed in  
 24 subsection (2).  
 25 Section 2. Section 117.10, Florida Statutes, is amended to  
 26 read:  
 27 117.10 Law enforcement and correctional officers;  
 28 administration of oaths.—Law enforcement officers, correctional  
 29 officers, and correctional probation officers, as defined in s.

Page 1 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

21-00266-14

2014152\_\_

30 943.10, and traffic accident investigation officers and traffic  
 31 infraction enforcement officers, as described in s. 316.640, are  
 32 authorized to administer oaths through electronic means or in  
 33 the physical presence of an affiant when engaged in the  
 34 performance of official duties. An oath may be administered  
 35 through electronic means if an affiant signs and transmits a  
 36 document by electronic means and is issued an electronic receipt  
 37 indicating the date and time the document was submitted.  
 38 Sections 117.01, 117.04, 117.045, 117.05, and 117.103 do not  
 39 apply to ~~the provisions of~~ this section. An officer may not  
 40 notarize his or her own signature.  
 41 Section 3. This act shall take effect July 1, 2014.

Page 2 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.





The Florida Senate

## Committee Agenda Request

**To:** Senator Greg Evers, Chair  
Committee on Criminal Justice

**Subject:** Committee Agenda Request

**Date:** October 8, 2013

I respectfully request that **Senate Bill #152**, relating to Law Enforcement & Correctional Officers, be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

A handwritten signature in cursive script, reading "Denise Grimsley", written over a horizontal line.

Senator Denise Grimsley  
Florida Senate, District 21

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/8/2014  
Meeting Date

Topic Electronic Oath

Bill Number SB 152  
(if applicable)

Name Erin Hellkamp

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Associate Lobbyist

Address 225 S. Adams Str. Suite 250  
Street

Phone 850-222-7718

Tallahassee FL 32301  
City State Zip

E-mail guy@guy-spearmen.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Sheriffs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

**This form is part of the public record for this meeting.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1 / 8 / 2014

*Meeting Date*

Topic \_\_\_\_\_

Bill Number 152  
*(if applicable)*

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH  
*Street*

Phone 727-897-9291

SAINT PETERSBURG FLORIDA 33705  
*City State Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/20/11)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Criminal Justice

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BILL: CS/SB 224

INTRODUCER: Regulated Industries Committee and Senator Benacquisto and others

SUBJECT: Alternative Nicotine Products

DATE: December 9, 2013

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<b>Fav/CS</b>
2.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<b>Favorable</b>
3.	_____	_____	<u>ACJ</u>	_____
4.	_____	_____	<u>AP</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 224 extends the current prohibitions related to tobacco products for persons under the age of 18, to prohibit the sale, gifting, possession, or use of nicotine dispensing devices, which include electronic cigarettes (e-cigarettes), to and by persons under the age of 18. (Selling or giving tobacco products to persons under 18 years is currently punishable as a second degree misdemeanor, unless it is a repeat violation within one year of the first violation. If so, it becomes punishable as a first degree misdemeanor. On the other hand, it is a noncriminal violation for persons under 18 years to possess, purchase, or misrepresent their age or military service to obtain such products.)

The bill defines the term “nicotine dispensing devices” to mean any product that can be used to deliver nicotine to an individual by inhaling vaporized nicotine from the product, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product and any replacement nicotine cartridge for the device or product.

The bill provides an effective date of July 1, 2014.

## II. Present Situation:

### Electronic Cigarettes

Electronic cigarettes, also known as e-cigarettes, are electronic products that permit users to inhale vaporized nicotine, flavor, and other chemicals, without fire, smoke, ash, or carbon dioxide. Electronic cigarettes are manufactured to resemble cigarettes, cigars, or pipes, but some are manufactured to resemble pens and USB memory sticks.<sup>1</sup>

### Tobacco Regulation in Florida

The Division of Alcoholic Beverage and Tobacco (division) within the Department of Business and Professional Regulation (department) is the state agency responsible for the enforcement of the tobacco product regulation provisions in ch. 569, F.S.

Section 569.002(6), F.S., defines the term “tobacco products” to include:

loose tobacco leaves, and products made from tobacco leaves, in whole or in part, and cigarette wrappers, which can be used for smoking, sniffing, or chewing.

Section 210.25(11), F.S., relating to the tax on tobacco products other than cigarettes or cigars, defines the term “tobacco products” to mean:

loose tobacco suitable for smoking; snuff; snuff flour; cavendish; plug and twist tobacco; fine cuts and other chewing tobaccos; shorts; refuse scraps; clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing; but “tobacco products” does not include cigarettes, as defined by s. 210.01(1), or cigars.

Section 569.0075, F.S., prohibits the giving of sample tobacco products to persons under the age of 18.

Section 569.101, F.S., prohibits the sale, delivery, bartering, furnishing or giving of tobacco products to persons under the age of 18. A violation of this prohibition is a second degree misdemeanor.<sup>2</sup> A second or subsequent violation within one year of the first violation is a first degree misdemeanor.<sup>3</sup>

Section 569.101(3), F.S., provides a complete defense to a person charged with a violation of this section if the buyer or recipient falsely evidenced that he or she was 18 years of age or older, a

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<sup>1</sup> What are Electronic Cigarette, Food and Drug Administration, at: <http://www.fda.gov/newsevents/publichealthfocus/ucm172906.htm> (Last visited October 27, 2013), and *Sottera, Inc. v. Food and Drug Administration*, 627 F.3d 891, 893 (D.C. Cir. 2010).

<sup>2</sup> Section 775.082, F.S., provides that the penalty for a misdemeanor of the second degree is punishable by a term of imprisonment not exceeding 60 days. Section 775.083, F.S. provides that the penalty for a misdemeanor of the second degree is punishable by a fine not to exceed \$500.

<sup>3</sup> Section 775.082, F.S., provides that the penalty for a misdemeanor of the first degree is punishable by a term of imprisonment not exceeding one year. Section 775.083, F.S. provides that the penalty for a misdemeanor of the first degree is punishable by a fine not to exceed \$1,000.

prudent person would believe the buyer or recipient to be 18 years of age or older, and the buyer or recipient presented false identification<sup>4</sup> upon which the person relied upon in good faith.

Section 569.11, F.S., prohibits persons under the age of 18 from possessing, directly or indirectly, any tobacco products. A first violation of this prohibition is a non-criminal violation with a penalty of 16 hours of community service or a \$25 fine, and attendance at a school-approved anti-tobacco program, if locally available. A second violation within 12 weeks of the first violation is punishable with a \$25 fine. A third or subsequent violation within 12 weeks of the first violation requires that the person must be punished with the suspension or revocation of his or her driver's license or driving privilege, as provided in s. 322.056, F.S.

In FY 2012-13, the Department of Highway Safety and Motor Vehicles revoked the driver's license for one person and suspended the driver's license for 561 persons for underage possession of tobacco products, and suspended the driver's license for one underage person for misrepresenting the age to purchase tobacco products.<sup>5</sup>

Section 569.14, F.S., requires that tobacco retailers must post a clear and conspicuous sign that the sale of tobacco products is prohibited to persons under the age of 18 and that proof of age is required for purchase. The division is required to make the signs available to retail tobacco dealers. Retail tobacco dealers must also have instructional material in the form of a calendar or similar format to assist in determining the age of the person attempting to purchase a tobacco product.

It is not clear whether the tobacco prohibitions for minors in current law include e-cigarettes as tobacco products. In an attempt to restrict minors' access to e-cigarettes, the division's Internet site advises tobacco retailers that e-cigarettes containing nicotine from tobacco leaves are tobacco products regulated in the state, and that it is unlawful to sell tobacco products, including electronic cigarettes, to a person under 18 years of age.<sup>6</sup> According to the division, this statement reflects the consensus among tobacco retailers that e-cigarettes should not be sold to persons under the age of 18. The division further states that the law should be amended to clarify the legal status of e-cigarettes.

Currently, the division's sworn law enforcement officers, as well as the non-sworn inspectors, routinely inspect retail tobacco permit holders for compliance with ch. 569, F.S. The division's sworn law enforcement officers also perform what is termed "surveys," which are undercover operations with underage operatives, as a means of enforcing the prohibitions on the sale of tobacco products to persons less than 18 years of age; and the prohibition on possession of tobacco products by persons less than 18 years of age.<sup>7</sup>

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<sup>4</sup> Identification includes carefully checking "driver's license or an identification card issued by this state or another state of the United States, a passport, or a United States armed services identification card presented by the buyer or recipient and acted in good faith and in reliance upon the representation and appearance of the buyer or recipient in the belief that the buyer or recipient was 18 years of age or older. (See s. 569.101(2)(c), F.S.).

<sup>5</sup> 2014 Agency Legislative Bill Analysis for SB 224, Department of Highway Safety and Motor Vehicles, October 30, 2013.

<sup>6</sup> See <http://www.myfloridalicense.com/dbpr/abt/index.html> (Last visited October 31, 2013).

<sup>7</sup> 2014 Agency Legislative Bill Analysis for SB 224, Department of Business and Professional Regulation, October 30, 2013.

According to the department, for the period of January 1, 2012 through December 28, 2012, the division performed 2,805 visits of retail tobacco dealers to determine compliance with ch. 569, F.S. These inspections resulted in 270 arrests for selling, delivering, furnishing, or giving tobacco products to persons under the age of 18. These visits also found three violations for failure to hold a valid retail tobacco permit.

According to the division, 29 administrative cases were initiated against licensees for selling tobacco products to underage persons and 28 civil penalties were collected. Section 569.008(5), F.S., requires a pattern of three or more violations by the employees of the tobacco dealer permit before a permit holder can be sanctioned for sales made by his or her employee. During this same period, the division also cited 136 persons under the age of 18 for possession of tobacco products.

### **Federal Regulation of E-Cigarettes**

The federal U.S. Food and Drug Administration (FDA) is a federal agency within the Department of Health and Human Services. The FDA's organization consists of the Office of the Commissioner and four directorates overseeing the core functions of the agency: Medical Products and Tobacco, Foods, Global Regulatory Operations and Policy, and Operations.<sup>8</sup> The Office of Medical Products and Tobacco provides advice and regulatory oversight to the FDA Commissioner through the centers for drug, biologics, medical devices, and tobacco products. The office also oversees the agency's special medical programs.<sup>9</sup>

Electronic cigarettes that are marketed for therapeutic purposes are regulated by the FDA Center for Drug Evaluation and Research (CDER).<sup>10</sup> The FDA Center for Tobacco Products regulates cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco.

The authority of the FDA to regulate e-cigarettes is based on the Family Smoking Prevention and Tobacco Control Act of 2009 (Tobacco Control Act).<sup>11</sup> Enacted on June 22, 2009, this act amended the Federal Food, Drug, and Cosmetic Act (FDCA) to authorize the FDA to regulate "tobacco products." The Tobacco Control Act defines the term "tobacco product," in part, as any product "made or derived from tobacco" that is not a "drug," "device," or combination product under the FDCA.

The Food and Drug Administration initially determined that certain e-cigarettes were both a drug and a device under the FDCA.<sup>12</sup> Products that fall under the authority of the FDCA as drugs or devices must go through a preapproval process before they can be marketed or sold to the consumer. Tobacco products do not have to go through a pre-approval process.

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<sup>8</sup> See <http://www.fda.gov/AboutFDA/CentersOffices/default.htm>. (Last visited November 4, 2013).

<sup>9</sup> See <http://www.fda.gov/AboutFDA/CentersOffices/OfficeofMedicalProductsandTobacco/default.htm>. (Last visited November 4, 2013).

<sup>10</sup> See <http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm172906.htm>. (Last visited November 4, 2013).

<sup>11</sup> Federal Food, Drug, and Cosmetic Act, 21 USC s. 351 et seq.

<sup>12</sup> See Department of Health & Human Service, Food and Drug Administration, Letter to Matt Salmon, President of Electronic Cigarette Association, dated September 8, 2010, available at: <http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/UCM225263.pdf> (Last visited October 10, 2013).

The regulatory classification of e-cigarettes as tobacco products was resolved by the United States Court of Appeals for the District of Columbia Circuit, in *Sottera, Inc. v. Food & Drug Administration*.<sup>13</sup> The court determined whether the FDA has the authority to regulate e-cigarettes as “tobacco products” under the Family Smoking and Tobacco Control Act of 2009<sup>14</sup> or whether they could be regulated by the FDA as drugs/devices under the FDCA.

The case involved Sottera, Inc., an importer and distributor of e-cigarettes, whose shipment of e-cigarettes had been denied entry by the FDA because, the FDA asserted, they appeared to be adulterated, misbranded, or unapproved drug-device combinations under the FDCA. The company sought an injunction to bar the FDA from denying their e-cigarettes entry into the United States and from regulating e-cigarettes under the drug-device combinations under the FDCA. The United States District Court for the District of Columbia granted the injunction and agreed that e-cigarettes were subject to regulation as tobacco products and were not subject to regulation as drugs/devices under FDCA.<sup>15</sup>

On appeal, the United States Court of Appeals for the District of Columbia Circuit held that e-cigarettes and other products made or derived from tobacco should be regulated as “tobacco products,” and not regulated as drugs/devices unless they are marketed for therapeutic purposes.

The FDA did not appeal this decision. The FDA has stated its intent to issue a proposed rule that would extend FDA’s tobacco product regulatory authority to products that meet the statutory definition of “tobacco product.”<sup>16</sup>

The National Association of Attorneys General (NAAG) issued a letter to the commissioner of the FDA urging the FDA to immediately regulate the sale and advertising of e-cigarettes as “tobacco products.” The letter was signed by 42 attorneys general, including Florida Attorney General Pam Bondi. The letter noted that, according to the U.S. Centers for Disease Control and Prevention, 1.8 million middle and high school students have said that they had tried e-cigarettes in 2012, which is double the amount for the previous year. The letter noted that e-cigarettes with fruit and candy flavors that appeal to youth and advertising have led consumers to believe that e-cigarettes are a safe alternative to cigarettes. The letter asserted that e-cigarettes are addictive, and regulatory oversight was needed to ensure the safety of e-cigarette ingredients.<sup>17</sup>

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<sup>13</sup> *Sottera, Inc. v. Food & Drug Administration*, 627 F.3d 891 (D.C. Cir. 2010).

<sup>14</sup> The Family Smoking and Tobacco Control Act of 2009, Pub.L. 111-31, 123 Stat. 1776.

<sup>15</sup> Another importer of e-cigarettes, Smoking Everywhere, Inc., had sought an injunction to bar the FDA from denying their e-cigarettes entry into the United States and from regulating e-cigarettes under the drug-device combinations under the FDCA. Sottera, Inc., then joined as an intervenor-plaintiff and also sought an injunction. Smoking Everywhere, Inc., dismissed its complaint against the FDA while the appeal was pending.

<sup>16</sup> See: Unified Agenda entry describing this rulemaking, Office of Information and Regulatory Affairs, Office of Management and Budget: <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201210&RIN=0910-AG38> (Last visited October 31, 2013).

<sup>17</sup> Letter from the National Association of Attorneys General to Margaret Hamburg, Commissioner of the U.S. Food and Drug Administration, October 23, 2013. A copy of the letter is available at: <http://www.naag.org/assets/files/pdf/signons/E%20Cigarette%20Final%20Letter%20w%20Florida.pdf> (Last visited November 1, 2013).



Some e-cigarettes specifically note in their marketing that e-cigarettes have not been evaluated by the Food and Drug Administration, are not intended to help people to stop smoking, and are not intended to treat, prevent or cure any disease or condition. Some retailers also assert that they voluntarily restrict sales to persons who are 18 years of age or older.

As noted above, the Centers for Disease Control and Prevention reported that the number of middle school and high school students in the United States who used electronic cigarettes doubled in 2012 compared to the previous year. According to the report, nearly 1.78 million students tried e-cigarettes in 2012 nationwide.<sup>18</sup> In Florida, 4.3 percent of middle school students and 12.1 percent of high school students have tried e-cigarettes in 2013. The number of Florida high school students who have tried e-cigarettes has increased from 6 percent in 2011 to 12.1 percent in 2013.<sup>19</sup>

### **III. Effect of Proposed Changes:**

The bill extends the current prohibitions related to tobacco products for persons under the age of 18, to prohibit the sale, gifting, possession, or use of nicotine dispensing devices, which include electronic cigarettes (e-cigarettes), to and by persons under the age of 18.

The bill creates s. 569.002(8), F.S., to define the term “nicotine dispensing devices” to mean any product that can be used to deliver nicotine to an individual by inhaling vaporized nicotine from the product, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product and any replacement nicotine cartridge for the device or product.

The bill amends s. 569.0075, F.S., to include nicotine dispensing devices in the prohibition against giving a sample of tobacco products to persons under the age of 18.

The bill amends s. 569.101, F.S., to include nicotine dispensing devices in the prohibition against the sale, delivery, bartering, furnishing or giving of tobacco products to persons under the age of 18 (currently punishable as a second degree misdemeanor, unless it is a repeat violation within one year of the first violation and then it becomes a first degree misdemeanor).

The bill amends s. 569.11, F.S., to include nicotine dispensing devices in the prohibition against persons under the age of 18 from possessing, directly or indirectly, any tobacco products (currently a noncriminal violation). It also adds a nicotine component to the anti-tobacco program that a first offender must attend.

The bill amends s. 569.19, F.S., to require the department to include the number of violations for selling nicotine dispensing devices to person under age 18 in its annual report.

The bill amends s. 569.14, F.S., to include nicotine dispensing devices in the signage requirements.

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<sup>18</sup> See <http://www.cdc.gov/media/releases/2013/p0905-ecigarettes-use.html>. (Last visited November 4, 2013).

<sup>19</sup> See <http://newsroom.doh.state.fl.us/wp-content/uploads/newsroom/2013/05/090613-E-Cigarette-Use-Among-Teens-Doubles.pdf> (Last visited November 5, 2013).

The bill provides an effective date of July 1, 2014.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Tobacco permit holders would be required to replace their point of sale calendars that indicate the date that a person is of legal age to purchase tobacco products to new calendars that reference nicotine dispensing devices, unless the permit holders are using readers, scanners, or other electronic or automated systems. They would also be required to replace signage that gives notice that the sale of tobacco products to persons under the age of 18 is prohibited with signage that also references nicotine dispensing devices. The cost for this requirement is indeterminate.

C. Government Sector Impact:

The Department of Business and Professional Regulation has indicated that if additional surveys are required for electronic cigarettes, then funds for an additional survey team would be required. The department estimates that a new survey team, which consists of two law enforcement officers and one underage operative, can complete an average of 3 tobacco surveys in a 4-hour time period or the equivalent of 1,191.75 surveys per year. The total cost would be \$273,259.00 for FY 2014-2015 and \$176,415.00 for subsequent years.

The Office of State Courts Administrator indicates that any fiscal impact on expenditures of the State Courts System because of the bill is anticipated to be insignificant.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

According to the National Conference of State Legislatures there are 27 states that have banned the sale of electronic cigarettes to minors.<sup>20</sup>

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 569.002, 569.0075, 569.101, 569.11, 569.14, and 569.19.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Regulated Industries Committee on March 7, 2013:**

The committee substitute (CS) amends s. 569.002(8), F.S., to define the term “nicotine dispensing devices.” The CS also replaces the term “alternative nicotine products” with the term “nicotine dispensing devices” in ss. 569.0075, 569.101, 569.11, and 569.14, F.S.

The CS does not create s. 569.002(1)(a), F.S., to define the term “alternative nicotine product,” and to provide an exemption from the meaning of that term for tobacco products; a product that is a drug, as defined in 21 U.S.C. s. 37 321(g)(1), a product that is a device as defined in 21 U.S.C. s. 39 321(h); and a combination product that is a device regulated under 21 U.S.C. s. 353(g).

The CS also does not create s. 569.002(1)(c), F.S., to define the term “electronic cigarette.”

The CS amends s. 569.19, F.S., to require the department to include the number of violations for selling nicotine dispensing devices to person under age 18 in its annual report.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

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<sup>20</sup> Those states are: AK (products containing nicotine other than cigs), AL (age 19), AZ, AR, CA, CO, HI, ID, IL (signed August 2013) IN, KS, MD, MN, MS, NV (definition includes “or derived from tobacco”), NH, NJ (age 19), NY, NC, OR (All sales banned, ordered by DOJ), SC, TN, UT (age 19), VT, WA, WI, WY.

By the Committee on Regulated Industries; and Senators  
Benacquisto, Latvala, Sobel, and Flores

580-00643-14

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A bill to be entitled

An act relating to nicotine dispensing devices;  
amending s. 569.002, F.S.; providing a definition;  
amending s. 569.0075, F.S.; prohibiting the gift of  
sample nicotine dispensing devices to persons under 18  
years of age; amending s. 569.101, F.S.; prohibiting  
the selling, delivering, bartering, furnishing, or  
giving of nicotine dispensing devices to persons under  
18 years of age, to which penalties apply; amending s.  
569.11, F.S.; prohibiting persons under 18 years of  
age from possessing, purchasing, or misrepresenting  
their age or military service to purchase nicotine  
dispensing devices; providing civil penalties;  
amending s. 569.14, F.S.; requiring certain signage  
where a dealer sells nicotine dispensing devices;  
amending s. 569.19, F.S.; requiring the Division of  
Alcoholic Beverages and Tobacco of the Department of  
Business and Professional Regulation to submit the  
number of violations for selling nicotine dispensing  
devices in its annual report; providing an effective  
date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (8) is added to section 569.002,  
Florida Statutes, to read:

569.002 Definitions.—As used in this chapter, the term:

(8) "Nicotine dispensing devices" mean any product that can  
be used to deliver nicotine to an individual by inhaling

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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vaporized nicotine from the product, including, but not limited  
to, an electronic cigarette, electronic cigar, electronic  
cigarillo, electronic pipe, or other similar device or product  
and any replacement nicotine cartridge for the device or  
product.

Section 2. Section 569.0075, Florida Statutes, is amended  
to read:

569.0075 Gift of sample tobacco products or sample nicotine  
dispensing devices prohibited.—The gift of sample tobacco  
products or sample nicotine dispensing devices to any person  
under the age of 18 by an entity licensed or permitted under the  
provisions of chapter 210 or this chapter, or by an employee of  
such entity, is prohibited and is punishable as provided in s.  
569.101.

Section 3. Subsections (1) and (3) of section 569.101,  
Florida Statutes, are amended to read:

569.101 Selling, delivering, bartering, furnishing, or  
giving tobacco products or nicotine dispensing devices to  
persons under 18 years of age; criminal penalties; defense.—

(1) It is unlawful to sell, deliver, barter, furnish, or  
give, directly or indirectly, to any person who is under 18  
years of age, any tobacco product or nicotine dispensing device.

(3) A person charged with a violation of subsection (1) has  
a complete defense if, at the time the tobacco product or  
nicotine dispensing device was sold, delivered, bartered,  
furnished, or given:

(a) The buyer or recipient falsely evidenced that she or he  
was 18 years of age or older;

(b) The appearance of the buyer or recipient was such that

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a prudent person would believe the buyer or recipient to be 18 years of age or older; and

(c) Such person carefully checked a driver's license or an identification card issued by this state or another state of the United States, a passport, or a United States armed services identification card presented by the buyer or recipient and acted in good faith and in reliance upon the representation and appearance of the buyer or recipient in the belief that the buyer or recipient was 18 years of age or older.

Section 4. Subsections (1), (2), and (6) of section 569.11, Florida Statutes, are amended to read:

569.11 Possession, misrepresenting age or military service to purchase, and purchase of tobacco products or nicotine dispensing devices by persons under 18 years of age prohibited; penalties; jurisdiction; disposition of fines.—

(1) It is unlawful for any person under 18 years of age to knowingly possess any tobacco product or nicotine dispensing device. Any person under 18 years of age who violates the provisions of this subsection commits a noncriminal violation as provided in s. 775.08(3), punishable by:

(a) For a first violation, 16 hours of community service or, instead of community service, a \$25 fine. In addition, the person must attend a school-approved anti-tobacco and nicotine program, if locally available;

(b) For a second violation within 12 weeks of the first violation, a \$25 fine; or

(c) For a third or subsequent violation within 12 weeks of the first violation, the court must direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or

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suspend or revoke the person's driver's license or driving privilege, as provided in s. 322.056.

Any second or subsequent violation not within the 12-week time period after the first violation is punishable as provided for a first violation.

(2) It is unlawful for any person under 18 years of age to misrepresent his or her age or military service for the purpose of inducing a dealer or an agent or employee of the dealer to sell, give, barter, furnish, or deliver any tobacco product or nicotine dispensing device, or to purchase, or attempt to purchase, any tobacco product or nicotine dispensing device from a person or a vending machine. Any person under 18 years of age who violates a provision of this subsection commits a noncriminal violation as provided in s. 775.08(3), punishable by:

(a) For a first violation, 16 hours of community service or, instead of community service, a \$25 fine and, in addition, the person must attend a school-approved anti-tobacco and nicotine program, if available;

(b) For a second violation within 12 weeks of the first violation, a \$25 fine; or

(c) For a third or subsequent violation within 12 weeks of the first violation, the court must direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend or revoke the person's driver's license or driving privilege, as provided in s. 322.056.

Any second or subsequent violation not within the 12-week time

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period after the first violation is punishable as provided for a first violation.

(6) Eighty percent of all civil penalties received by a county court pursuant to this section shall be remitted by the clerk of the court to the Department of Revenue for transfer to the Department of Education to provide for teacher training and for research and evaluation to reduce and prevent the use of tobacco products or nicotine dispensing devices by children. The remaining 20 percent of civil penalties received by a county court pursuant to this section shall remain with the clerk of the county court to cover administrative costs.

Section 5. Subsections (1), (2), and (3) of section 569.14, Florida Statutes, are amended to read:

569.14 Posting of a sign stating that the sale of tobacco products or nicotine dispensing devices to persons under 18 years of age is unlawful; enforcement; penalty.—

(1) Any dealer that sells tobacco products or nicotine dispensing devices shall post a clear and conspicuous sign in each place of business where such products are sold which substantially states the following:

THE SALE OF TOBACCO PRODUCTS OR NICOTINE DISPENSING DEVICES TO PERSONS UNDER THE AGE OF 18 IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

(2) The division shall make available to dealers of tobacco products or nicotine dispensing devices signs that meet the requirements of subsection (1).

(3) Any dealer that sells tobacco products or nicotine

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dispensing devices shall provide at the checkout counter in a location clearly visible to the dealer, the dealer's agent or employee, instructional material in a calendar format or similar format to assist in determining whether a person is of legal age to purchase tobacco products or nicotine dispensing devices. This point of sale material must contain substantially the following language:

IF YOU WERE NOT BORN BEFORE THIS DATE

(insert date and applicable year)

YOU CANNOT BUY TOBACCO PRODUCTS OR NICOTINE DISPENSING DEVICES.

Upon approval by the division, in lieu of a calendar a dealer may use card readers, scanners, or other electronic or automated systems that can verify whether a person is of legal age to purchase tobacco products or nicotine dispensing devices. Failure to comply with the provisions contained in this subsection shall result in imposition of administrative penalties as provided in s. 569.006.

Section 6. Subsection (3) of section 569.19, Florida Statutes, is amended to read:

569.19 Annual report.—The division shall report annually with written findings to the Legislature and the Governor by December 31, on the progress of implementing the enforcement provisions of this chapter. This must include, but is not limited to:

(3) The number of violations for selling tobacco products or nicotine dispensing devices to persons under age 18, and the results of administrative hearings on the above and related

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175 issues.

176 Section 7. This act shall take effect July 1, 2014.

# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:  
Appropriations, *Vice Chair*  
Appropriations Subcommittee on Education  
Appropriations Subcommittee on Health  
and Human Services  
Banking and Insurance  
Education  
Ethics and Elections  
Gaming  
Governmental Oversight and Accountability  
Rules

**SENATOR LIZBETH BENACQUISTO**

*Majority Leader*  
30th District

November 7, 2013

The Honorable Greg Evers  
Senate Criminal Justice, Chair  
308 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399

**RE: SB 224 – Relating to Alternative Nicotine Products**

Dear Mr. Chair:

Please allow this letter to serve as my respectful request to agenda SB 224, Relating to Alternative Nicotine Products, for a public hearing at your earliest convenience.

Your kind consideration of this request is greatly appreciated. Please feel free to contact my office for any additional information.

Sincerely,



Lizbeth Benacquisto  
Senate District 30

Cc: Amanda Cannon

REPLY TO:

- ☐ 1926 Victoria Ave, 2nd Floor, Fort Myers, Florida 33901 (239) 338-2570
- ☐ 330 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5030

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

DON GAETZ  
President of the Senate

GARRETT RICHTER  
President Pro Tempore



THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

W  
✓

1 / 8 / 2014

Meeting Date

Topic \_\_\_\_\_

Bill Number 324

(if applicable)

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_

(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG

FLORIDA

33705

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☒ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/20/11)

W  
✓

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/8/14  
Meeting Date

Topic Nicoten Dis. Devices

Bill Number 224  
(if applicable)

Name Merritt Martin

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Legislative Affairs

Address 2629 W. Magruder Dr.  
Street

Phone 813-240-3451

Tampa FL 33602  
City State Zip

E-mail merritt.martin@  
moffitt.org

Speaking: ☒ For ☐ Against ☐ Information

Representing Moffitt Cancer Center

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/20/11)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Criminal Justice

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BILL: SB 360

INTRODUCER: Senators Bradley and Evers

SUBJECT: Sentencing for Controlled Substance Violations

DATE: December 9, 2013

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Cannon	CJ	<b>Favorable</b>
2. _____	_____	ACJ	_____
3. _____	_____	AP	_____

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**I. Summary:**

SB 360 increases from 4 to 14 grams the minimum weight threshold for trafficking in oxycodone and hydrocodone (prescription painkillers) under s. 893.135, F.S., the drug trafficking statute. As a result of this change, persons who unlawfully possess, sell, etc., relatively small quantities of oxycodone or hydrocodone (less than 4 grams) will no longer be punished for drug trafficking. They still may be punished under s. 893.13, F.S., for unlawful acts involving controlled substances, but the penalties are not as significant as drug trafficking penalties. Further, some persons who meet the revised weight threshold for trafficking in oxycodone or hydrocodone will receive a shorter mandatory minimum term than under current law.

Increasing weight thresholds for trafficking in prescription painkillers is an option that the Office of Program Policy Analysis and Government Accountability proposed in a 2012 report.

The bill provides that trafficking in 14 grams or more, but less than 30 kilograms, of oxycodone or hydrocodone is a first degree felony, and is subject to the following mandatory minimum terms and fines:

- Trafficking in 14 grams or more, but less than 28 grams, of oxycodone or hydrocodone: 3-year mandatory minimum term and \$50,000 fine. (Current law: 3-year mandatory minimum term/\$50,000 fine for trafficking in 4 grams or more, but less than 14 grams, of oxycodone or hydrocodone.)
- Trafficking in 28 grams or more, but less than 50 grams, of oxycodone or hydrocodone: 7-year mandatory minimum term and \$100,000 fine. (Current law: 15-year mandatory minimum term/\$100,000 fine for trafficking in 14 grams or more, but less than 28 grams, of oxycodone or hydrocodone.)
- Trafficking in 50 grams or more, but less than 200 grams, of oxycodone or hydrocodone: 15-year mandatory minimum term and \$500,000 fine. (Current law: 25-year mandatory

minimum term/\$500,000 fine for trafficking in 28 grams or more, but less than 30 kilograms, of oxycodone or hydrocodone.)

- Trafficking in 200 grams or more of oxycodone or hydrocodone: 25-year mandatory minimum term and \$750,000 fine. (Current law: 25-year mandatory minimum term/\$500,000 fine for trafficking in 28 grams or more, but less than 30 kilograms, of oxycodone or hydrocodone.)

The Legislature's Office of Economic and Demographic Research preliminarily estimates that the increase in the minimum weight threshold for trafficking in oxycodone and hydrocodone (from 4 grams to 14 grams) will result in the need for 465 fewer prison beds by FY 2018-19 with a cumulative savings of \$48,387,651.

## **II. Present Situation:**

Unlawful activities involving controlled substance (e.g., possession or sale of controlled substances) are punishable under s. 893.13, F.S. (prohibited acts involving controlled substances), and s. 893.135, F.S. (drug trafficking). Oxycodone and hydrocodone are opioid prescription painkillers and Schedule II controlled substances, though materials, compounds, mixtures, or preparations containing limited quantities of hydrocodone are Schedule III controlled substances.<sup>1</sup>

### **Drug Trafficking/Oxycodone and Hydrocodone**

"Drug trafficking" consists of knowingly selling, purchasing, manufacturing, delivering, or bringing into this state, or knowingly being in actual or constructive possession<sup>2</sup> of, certain controlled substances in a statutorily-specified quantity.

Whether a person is charged with drug trafficking depends, in part, on the type of controlled substance possessed, sold, etc. Only a limited number of controlled substances are covered under s. 893.135, F.S. Oxycodone and hydrocodone are covered drugs. Specifically, s. 893.135(1)(c), F.S., punishes "trafficking in illegal drugs." The relevant "illegal drugs" include morphine, opium, oxycodone, hydrocodone, hydromorphone, and salts, derivatives, isomers, and salts of isomers of these substances, including heroin, and mixtures containing any of these substances.

The quantity of a covered controlled substance must also meet a minimum weight threshold prescribed in s. 893.135, F.S. Most drug trafficking offenses are first degree felonies and are subject to mandatory minimum terms.<sup>3</sup> Section 893.135, F.S., establishes escalating weight ranges. The mandatory minimum term applicable to a drug trafficking act depends upon which weight range is applicable to the quantity of the controlled substances that are possessed, sold, etc.

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<sup>1</sup> Schedule III: not more than 300 milligrams of hydrocodone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium or with recognized therapeutic amounts of one or more active ingredients which are not controlled substances. Section 893.03(3)(c)3. and 4., F.S.

<sup>2</sup> One important and unique feature of the drug trafficking statute is that the prosecutor is not required to prove that the possession of the controlled substance was with the intent to sell, deliver, manufacture, etc., the substance.

<sup>3</sup> Most drug offenses under s. 893.13, F.S., are not subject to mandatory minimum terms.

***Trafficking in oxycodone and hydrocodone (first degree felony)***

Section 893.135(1)(c)1., F.S., provides, in part, that it is a first degree felony<sup>4</sup> to traffic in 4 grams<sup>5</sup> or more of oxycodone or hydrocodone.

If the quantity involved:

- Is 4 grams or more, but less than 14 grams, the offender is subject to a mandatory minimum term of imprisonment of 3 years and a fine of \$50,000.<sup>6</sup>
- Is 14 grams or more, but less than 28 grams, the offender is subject to a mandatory minimum term of imprisonment of 15 years and a fine of \$100,000.<sup>7</sup>
- Is 28 grams or more, but less than 30 kilograms, the offender is subject to a mandatory minimum term of imprisonment of 25 calendar years and a fine of \$500,000.<sup>8</sup>

***Trafficking in oxycodone or hydrocodone (first degree felony punishable by life imprisonment)***

Section 893.135(1)(c)2., F.S., provides, in part, that it is a first degree felony punishable by life imprisonment<sup>9</sup> and a fine of \$500,000 to traffic in 30 kilograms or more of oxycodone or hydrocodone. A person convicted of this offense is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release under s. 947.149, F.S.

***Trafficking in oxycodone or hydrocodone (capital felony)***

Section 893.135(1)(c)2., F.S., provides, in part, that it is a capital felony<sup>10</sup> to traffic in 30 kilograms or more of oxycodone or hydrocodone if:

- The offender intentionally killed an individual or counseled, commanded, induced, procured, or caused the intentional killing of an individual and such killing was the result.
- The offender's conduct in committing that act led to a natural, though not inevitable, lethal result.

The offender is also subject to a fine of \$500,000.

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<sup>4</sup> A first degree felony is generally punishable by up to 30 years in state prison. Section 775.082, F.S. Repeat offender sanctions may be available under ss. 775.082 and 775.084, F.S.

<sup>5</sup> For purpose of comparison, the approximate weight of a U.S. currency note, regardless of denomination, is one gram. This information is available at <http://www.moneyfactory.gov/faqlibrary.html> (last visited on December 13, 2013).

<sup>6</sup> Section 893.135(1)(c)1.a., F.S. This offense is ranked in Level 7 of the Criminal Punishment Code offense severity ranking chart. Section 921.0022(3)(g), F.S.

<sup>7</sup> Section 893.135(1)(c)1.b., F.S. This offense is ranked in Level 8 of the Criminal Punishment Code offense severity ranking chart. Section 921.0022(3)(h), F.S.

<sup>8</sup> Section 893.135(1)(c)1.c., F.S. This offense is ranked in Level 9 of the Criminal Punishment Code offense severity ranking chart. Section 921.0022(3)(i), F.S.

<sup>9</sup> As previously indicated, in general, a first degree felony is punishable by up to 30 years in state prison under s. 775.082, F.S. However, this section also provides that a first degree felony may be punished by a term of years not exceeding life imprisonment when specifically provided by statute.

<sup>10</sup> A capital felony is punishable by life imprisonment or death. Section 775.082, F.S. See s. 921.142, F.S. (further proceedings to determine sentence for capital trafficking felonies).

***Capital importation of oxycodone or hydrocodone (capital felony)***

Section 893.135(1)(c)3., F.S., provides, in part, that it is a capital felony to knowingly bring into this state (“import”) 60 kilograms or more of oxycodone or hydrocodone, knowing that the probable result of such importation would be the death of any person. The offender is also subject to a fine of \$500,000.

**“Opioid” Medications and Drug Trafficking**

Medications that contain oxycodone or hydrocodone (“opioid” medications) are within the ambit of s. 893.135(1)(c), F.S., which also covers “mixtures” containing these substances. Trafficking weight involving pills containing either of these controlled substances is determined by the total weight of each pill multiplied by the number of pills possessed, sold, etc. The total weight of a pill includes the weight of the controlled substance in the pill (e.g., hydrocodone) and the weight of noncontrolled substances or matter in the pill, such as coating, binders, and nonprescription drugs (e.g., acetaminophen).<sup>11</sup> A relatively small number of pills may meet the 4 gram threshold for trafficking.

In a 2012 report, the Office of Program Policy Analysis and Government Accountability (OPPAGA) provided a table<sup>12</sup> indicating how many hydrocodone and oxycodone pills would be necessary to meet the threshold gram weight for each gram weight range in s. 893.135(1)(c)1.a.-c., F.S. The weight ranges are:

- 4 grams or more, but less than 14 grams.
- 14 grams or more, but less than 28 grams.
- 28 grams or more, but less than 30 kilograms.

The table is based on a hydrocodone pill that weighs 0.65 grams with 10 mg. of hydrocodone and an oxycodone pill that weighs 0.13 grams with 30 mg. of oxycodone. Due to the different compositions of prescription opioids, noncontrolled substances may add significantly to the total weight of the pill or tablet as, for example, is the case with medication that contains hydrocodone and acetaminophen. Provided is the information from OPPAGA’s table and the mandatory minimum term applicable to the threshold weight for each gram weight range in s. 893.135(1)(c)1.a.-c., F.S. (i.e., 4 grams, 14 grams, and 28 grams):

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<sup>11</sup> See ss. 893.02(16) and 893.135(6), F.S.

<sup>12</sup> *Opinions Are Mixed About Sentencing Laws for Painkiller Trafficking*, Report No. 12-02 (January 2012), at p. 5 (Exhibit 6), Office of Program Policy Analysis and Government Accountability, available at <http://www.oppaga.state.fl.us/Summary.aspx?reportNum=12-02> (last visited on December 13, 2013). This report is further cited as “OPPAGA Report.”

Number of Pills and Gram Weight Thresholds to Meet Mandatory Minimum Term				
Prescription Drug	Pill Weight	3-year mandatory minimum term	15-year mandatory minimum term	25-year mandatory minimum term
Hydrocodone (10 mg.)	0.65 grams	7 pills (4 grams)	22 pills (14 grams)	44 pills (28 grams)
Oxycodone (30 mg.)	0.13 grams	31 pills (4 grams)	108 pills (14 grams)	215 pills (28 grams)

### **OPPAGA Report No. 12-02: Prison Admissions for Opioid Trafficking and Profile of Opioid Trafficking Offenders**

Using Department of Corrections' data for FY 2006-07 to FY 2010-11, the OPPAGA found that prescription admissions for trafficking quadrupled over those five fiscal years. According to the OPPAGA, this substantial increase in admissions was primarily attributable to oxycodone trafficking convictions:

Department of Corrections data shows that prison admissions for trafficking in opioids have more than quadrupled over the past five years, from 262 admissions in Fiscal Year 2006-07 to 1,200 in Fiscal Year 2010-11.... This data does not distinguish among the types of opioids, and as a result, offenses involving heroin are grouped with those involving prescription painkillers. This is because these two controlled substances are addressed in the same section of the drug trafficking statute, and thus subject to the same weight thresholds and minimum mandatory sentences.

To evaluate the factors leading to the recent increase in prison admissions for trafficking in opioids, we reviewed data for a statewide random sample of 194 offenders admitted to prison for this offense during Fiscal Year 2010-11. We determined the type and amount of drugs involved in their offenses and the circumstances surrounding their arrests and convictions. Our analyses found that the recent increase in prison admissions for opioid trafficking was primarily due to convictions for prescription painkillers rather than heroin....<sup>13</sup>

A noteworthy postscript to the OPPAGA report is that the quadrupled prison admissions for trafficking in opioids began to wane in FY 2011-12. Between FY 2010-11 and FY 2011-12 there was a 14.1 percent decline in prison admissions for trafficking in opioids.<sup>14</sup> Although the cause of this decline is empirically unknown, it is most likely attributable to a number of measures taken by Florida to reduce prescription drug abuse, such as removing so-called "pill mills" in the state.

The OPPAGA analyzed arrest reports for the sample 194 offenders and determined that "almost all (93%) were convicted of trafficking in prescription painkillers.... [A]rrests most commonly

<sup>13</sup> OPPAGA Report, at pp. 2-3 (footnotes omitted).

<sup>14</sup> Information provided on April 4, 2013, to staff (via e-mail) by the Office of Economic and Demographic Research.

involved oxycodone (73%) or hydrocodone (28%). In comparison, 6% of the offenders were convicted of trafficking in heroin.”<sup>15</sup>

The OPPAGA provided the following information regarding how most of these arrests occurred:

Most offenders in our sample (62%) were arrested for selling prescription painkillers to an undercover law enforcement officer or confidential informant.... In these cases, officers worked undercover to buy drugs from known dealers or monitored confidential informants during meetings they arranged to make purchases. In other cases, offenders were arrested for trafficking after a traffic stop or other law enforcement contact, or after being reported by a pharmacist for possible prescription fraud.<sup>16</sup>

The majority of the offenders in the OPPAGA’s sample illegally possessed or sold 30 to 90 pills:

For most of the offenders convicted of trafficking in oxycodone or hydrocodone, their convictions were based on the illegal possession or sale of a number of pills equivalent to one or two prescriptions. For those offenders sentenced for trafficking in hydrocodone, 50% were arrested for possessing or selling fewer than 30 pills and 25% were arrested for fewer than 15 pills. For offenders sentenced for trafficking in oxycodone, offenders possessed or sold a median number of 91 pills at the time of their arrests.

Following accepted medical practice, physicians may prescribe 30 or more prescription painkillers for patients with chronic pain or recovering from surgery. For example, a patient recovering from surgery may receive a one-time prescription of 30 to 60 hydrocodone or oxycodone pills, often in forms that also contain acetaminophen. Illegal possession of such an amount could trigger a minimum mandatory sentence.<sup>17</sup>

Most of the offenders in the OPPAGA sample did not have a prior drug trafficking record and were determined by prison staff to need substance abuse treatment:

Our analysis of Department of Corrections data on the 1,200 offenders admitted to prison for opioid trafficking in Fiscal Year 2010-11 found that 74% had not previously been admitted to prison.... Half had either never been on probation or had been on probation solely for drug possession, and 81% did not have a prior history of offenses involving selling or trafficking drugs. Most (84%) had no current or past violent offenses.

These offenders tended to have substance abuse problems and were at low risk for recidivism. Prison staff assessments determined that 65% of these offenders needed substance abuse treatment and 61% were at low risk for recidivism.<sup>18</sup>

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<sup>15</sup> OPPAGA Report, at p. 3.

<sup>16</sup> *Id.*

<sup>17</sup> OPPAGA Report, at p. 4. In a footnote (n. 7, at p. 4) at the end of the second paragraph of this quote, the OPPAGA noted: “Law enforcement and other stakeholders reported that pain clinics they would consider as being ‘pill mills’ routinely prescribe much higher amounts of prescription painkillers, such as 180 oxycodone pills per month.”

<sup>18</sup> *Id.* In a footnote (n. 8, at p. 4) at the end of the second paragraph of this quote, the OPPAGA noted: “Prison staff assessed offenders’ risk of recidivism using the risk assessment instrument developed by the Department of Corrections. Recidivism is defined as return to prison within three years of release.”



## Drug Trafficking Sentencing

The Criminal Punishment Code (Code)<sup>19</sup> is Florida's framework or mechanism for determining permissible sentencing ranges for noncapital felonies. Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10). Points are assigned and accrue based upon the level ranking (sentence points escalate as the level escalates) assigned to the primary offense, additional offenses, and prior offenses. Points may be added or multiplied for other factors. For example, if the primary offense is drug trafficking, the subtotal sentence points are multiplied, at the discretion of the court, for a Level 7 or Level 8 offense, by 1.5.<sup>20</sup>

Total sentence points are entered into a mathematical calculation (specified in statute) to determine the lowest permissible sentence. The permissible sentencing range is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S., for the primary offense and any additional offenses before the court for sentencing. The court is permitted to impose sentences concurrently or consecutively.

The Code includes a list of 'mitigating' factors. If a mitigating factor is found by the sentencing court, the court may decrease an offender's sentence below the lowest permissible sentence (a "downward departure"). A mandatory minimum term is not subject to these mitigating factors.<sup>21</sup>

Most of the mandatory minimum terms found in Florida law involve drug trafficking offenses. Mandatory minimum terms impact Code sentencing. "If the lowest permissible sentence is less than the mandatory minimum sentence, the mandatory minimum sentence takes precedence. If the lowest permissible sentence exceeds the mandatory sentence, the requirements of the ... Code and any mandatory minimum penalties apply."<sup>22</sup>

A mandatory minimum sentence is often longer than a prison sentence scored as the lowest permissible sentence under the Code, so the sentencing range is narrowed. Further, with few exceptions, the sentencing court must impose the mandatory minimum term.<sup>23</sup>

Mandatory minimums terms are not uniform for all controlled substances covered under s. 893.135, F.S. Further, the quantity of the controlled substance that will trigger mandatory

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<sup>19</sup> Sections 921.002 - 921.0027, F.S.

<sup>20</sup> Section 921.0024(1)(b), F.S.

<sup>21</sup> See *State v. Vanderhoff*, 14 So.3d 1185 (Fla. 5th DCA 2009).

<sup>22</sup> Rule 3.704(26) ("The Criminal Punishment Code"), Florida Rules of Criminal Procedure. A trafficking mandatory minimum term is a minimum sentencing 'floor' for the court and there is no prohibition to gain-time. If the court only sentences the defendant to the mandatory term specified by statute, the Department of Corrections (DOC) establishes an 85% minimum service date on the term and the offender is subject to s. 944.275(4)(b)3., F.S., which does not allow release prior to serving a minimum of 85% of the sentence. If the court imposes a sentence that exceeds the mandatory term specified by statute, the DOC establishes an 85% minimum service date on the sentence. See *Mastay v. McDonough*, 928 So.2d 512 (Fla. 1st DCA 2006) (Section 893.135, F.S., does not preclude earning gain-time during the mandatory term as long as it does not result in the prisoner's release prior to serving a minimum of 85% of the sentence).

<sup>23</sup> Staff found only two circumstances in which a sentencing court is authorized by law to impose a sentence below the mandatory minimum term. The first circumstance is when the court sentences a defendant as a youthful offender. Section 958.04, F.S. See *Christian v. State*, 84 So.3d 437 (Fla. 5th DCA 2012). The second circumstance is when the court grants a motion from the state attorney to reduce or suspend a sentence based upon substantial assistance rendered by the defendant. Section 893.135(4), F.S.

minimum terms depends upon the controlled substance trafficked, as illustrated in the table below.

<b>COMPARISON OF TRAFFICKING WEIGHT RANGES AND MANDATORY MINIMUM TERMS FOR CERTAIN CONTROLLED SUBSTANCES</b>			
<b>Trafficking Provision</b>	<b>First Weight Range</b>	<b>Second Weight Range</b>	<b>Third Weight Range</b>
Trafficking in illegal drugs (includes <b>prescription opioids</b> ) (s. 893.135(1)(c)1., F.S.)	<b>3-year</b> mandatory minimum term ( <b>4 grams</b> to less than 14 grams)	<b>15-year</b> mandatory minimum term ( <b>14 grams</b> to less than 28 grams)	<b>25-year</b> mandatory minimum term ( <b>28 grams</b> to less than 30 kilograms)
Trafficking in <b>cocaine</b> (s. 893.135(1)(b)1., F.S.)	<b>3-year</b> mandatory minimum term ( <b>28 grams</b> to less than 200 grams)	<b>7-year</b> mandatory minimum term ( <b>200 grams</b> to less than 400 grams)	<b>15-year</b> mandatory minimum term ( <b>400 grams</b> to less than 150 kilograms)
Trafficking in <b>phencyclidine</b> (s. 893.135(1)(d)1., F.S.)	<b>3-year</b> mandatory minimum term ( <b>28 grams</b> to less than 200 grams)	<b>7-year</b> mandatory minimum term ( <b>200 grams</b> to less than 400 grams)	<b>15-year</b> mandatory minimum term ( <b>400 grams</b> or more)
Trafficking in <b>methaqualone</b> (s. 893.135(1)(e)1., F.S.)	<b>3-year</b> mandatory minimum term ( <b>200 grams</b> to less than 5 kilograms)	<b>7-year</b> mandatory minimum term ( <b>5 kilograms</b> to less than 25 kilograms)	<b>15-year</b> mandatory minimum term ( <b>25 kilograms</b> or more)
Trafficking in <b>amphetamine or methamphetamine</b> (s. 893.135(1)(f)1., F.S.)	<b>3-year</b> mandatory minimum term ( <b>14 grams</b> to less than 28 grams)	<b>7-year</b> mandatory minimum term ( <b>28 grams</b> to less than 200 grams)	<b>15-year</b> mandatory minimum term ( <b>200 grams</b> or more)

### **OPPAGA Report No. 12-02: Increasing Weight Thresholds for Trafficking in Prescription Painkillers is an Option**

In its report the OPPAGA provided a number of options for addressing trafficking in prescription painkillers. One of those options was to “[r]evise Florida statutes to increase the weight thresholds for prescription painkillers so that it would take more pills to be charged with drug trafficking offenses subject to minimum mandatory sentences.”<sup>24</sup>

### **III. Effect of Proposed Changes:**

The bill increases from 4 to 14 grams the minimum weight threshold for trafficking in oxycodone and hydrocodone (prescription painkillers) under s. 893.135, F.S., the drug trafficking statute. As a result of this change, persons who unlawfully possess, sell, etc.,

<sup>24</sup> OPPAGA Report, at p. 8.

relatively small quantities of oxycodone or hydrocodone will no longer be punished for drug trafficking. They still may be punished under s. 893.13, F.S., for unlawful acts involving controlled substances, but the penalties are not as significant as drug trafficking penalties. Further, some persons who meet the revised weight threshold for trafficking in oxycodone or hydrocodone will receive a shorter mandatory minimum term than under current law.

The bill removes reference to “oxycodone” and “hydrocodone” wherever those words appear in s. 893.135(1)(c)1. and 2., F.S. (which punish trafficking in opium, morphine, heroin, hydromorphone, oxycodone, and hydrocodone, and other substances).

The bill creates a new subparagraph s. 893.135(1)(c)3., F.S., which punishes (as a first degree felony) “trafficking in illegal prescription drugs.” The new trafficking provision only applies to a person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of 14 grams or more of any oxycodone or hydrocodone, or 14 grams or more of any mixture containing any such substance.

Under the new trafficking provision, the minimum gram weight threshold for trafficking in oxycodone or hydrocodone, which is 14 grams, differs from current law in which the minimum gram weight threshold for trafficking in these substances is 4 grams. Gram weight ranges and applicable mandatory minimum terms differ from current law.<sup>25</sup>

<b>CURRENT LAW AND SB 360 ON MANDATORY MINIMUM TERMS</b>		
<b>Drug Trafficking Mandatory Minimum Term</b>	<b>Quantity/Weight Required for Hydrocodone and Oxycodone Under Current Law</b>	<b>Quantity/Weight Required for Hydrocodone and Oxycodone Under SB 1860</b>
3 years	4 grams or more but less than 14 grams	14 grams or more but less than 28 grams
7 years	N/A	28 grams or more but less than 50 grams
15 years	14 grams or more but less than 28 grams	50 grams or more but less than 200 grams
25 years	28 grams or more but less than 30 kilograms	200 grams or more
Life	30 kilograms or more	N/A

Section 893.135(1)(c), F.S., currently includes a life imprisonment penalty (s. 893.135(1)(c)2., F.S.)<sup>26</sup> and two capital felonies (s. 893.135(1)(c)2. and 3., F.S.). Under the bill, the life

<sup>25</sup> Fines are the same as current law with one exception. The bill provides for a \$750,000 fine for trafficking in 200 grams or more of oxycodone or hydrocodone. Current law provides for a \$500,000 fine for trafficking in the same quantity of oxycodone or hydrocodone. Section 893.135(1)(c)1.c., F.S.

<sup>26</sup> According to the OPPAGA, “[i]n Fiscal Year 2010-11, there were no offenders imprisoned for life for trafficking in opioids.” OPPAGA Report, at p. 2, n. 1.

imprisonment penalty and one of the two capital felonies would not apply to trafficking in oxycodone and hydrocodone.

The bill amends s. 921.022, F.S., the offense severity ranking chart of the Criminal Punishment Code, to rank the offenses relating to trafficking in oxycodone and hydrocodone that have been removed from s. 893.135(1)(c)1. and 2., F.S., and placed in their own subparagraph. The offenses are ranked as follows:

- Trafficking in 14 grams or more, but less than 28 grams, of oxycodone/hydrocodone: Level 6.
- Trafficking in 28 grams or more, but less than 50 grams, of oxycodone/hydrocodone: Level 7.
- Trafficking in 50 grams or more, but less than 200 grams, of oxycodone/hydrocodone: Level 8.
- Trafficking in 200 grams or more of oxycodone/hydrocodone: Level 9.

The bill reenacts ss. 787.087(2)(a) and (3)(a) and 782.04(1)(a), (3), and (4), F.S., to incorporate the amendments made to s. 893.135, F.S., in references to that statute.

The effective date of the bill is July 1, 2014.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

**C. Government Sector Impact:**

The bill will result in a positive fiscal impact (cost avoidance) in several ways. First, drug offenders who are convicted of possessing, selling, etc., less than 14 grams of oxycodone or hydrocodone will no longer be subject to the drug trafficking 3-year mandatory minimum term, but instead will be sentenced under the Criminal Punishment Code (based on a conviction for a drug offense under s. 893.13, F.S.). According to a preliminary estimate from the Legislature's Office of Economic and Demographic Research (EDR), this change alone is estimated to result in the need for 465 fewer prison beds by FY 2018-19 with a cumulative savings of \$48,387,615. Given the current prison bed surplus situation, however, a more realistic savings projection may be \$16,930,000 over the next five years, which represents a savings in operational expenditures associated with 465 fewer inmates.

The following table depicts this projected fiscal impact:

<b>Fiscal Impact of SB 360</b> <b>Increasing from 4 Grams to 14 Grams the Threshold for the 3-Year Minimum Mandatory for Trafficking</b> <b>in Hydrocodone or Oxycodone</b> <b>For offenses after July 1, 2014</b>						
Fiscal Year	Projected Cumulative Prison Beds Required	Projected Additional Annual Prison Beds Required	FUNDS REQUIRED			
			Annual Operating Costs	Annual Fixed Capital Outlay Costs	TOTAL Annual Funds	TOTAL Cumulative Funds
2014-2015	-1	-1	(\$9,434)	(\$2,543,927)	(\$2,553,361)	(\$2,553,361)
2015-2016	-41	-40	(\$402,570)	(\$9,440,046)	(\$9,842,616)	(\$12,395,977)
2016-2017	-188	-147	(\$2,234,468)	(\$13,002,052)	(\$15,236,520)	(\$27,632,497)
2017-2018	-384	-196	(\$5,681,676)	(\$5,502,330)	(\$11,184,006)	(\$38,816,503)
2018-2019	-465	-81	(\$8,602,068)	(\$969,080)	(\$9,571,148)	(\$48,387,651)
<b>TOTAL</b>	<b>-465</b>	<b>-465</b>	<b>(\$16,930,216)</b>	<b>(\$31,457,435)</b>	<b>(\$48,387,651)</b>	<b>(\$48,387,651)</b>

Prepared by Florida Legislature, Office of Economic and Demographic Research, November 13, 2013

The EDR notes that this impact statement is not intended to represent the direct appropriations impact of the bill. Rather, it provides a stand-alone estimate of the prison bed need of the bill. Cost data are included to allow a comparison of the impact of the bill with other proposed legislation. The actual appropriation associated with passage of the bill will depend on a number of factors, including the existing inventory of prison beds.

Second, staff notes that an additional but indeterminate cost avoidance is also likely to be achieved based on the inclusion of a 7-year mandatory minimum term (not a feature of current s. 893.135(1)(c), F.S.) and changes to other weight thresholds and to weight ranges, but the impact will most likely be significantly smaller and will not be experienced for many years out.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 893.135 and 921.0022.

This bill reenacts provisions of the following sections of the Florida Statutes: 775.087 and 782.04.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

By Senator Bradley

7-00124-14

2014360\_\_

A bill to be entitled

An act relating to sentencing for controlled substance violations; amending s. 893.135, F.S.; providing that a person who knowingly sells, purchases, manufactures, delivers, or brings into this state specified quantities of oxycodone or hydrocodone, or who is knowingly in actual or constructive possession of specified quantities of oxycodone or hydrocodone, commits the offense of trafficking in illegal prescription drugs, a felony of the first degree; providing criminal penalties; amending s. 921.0022, F.S.; ranking the offenses of trafficking in illegal prescription drugs for purposes of the criminal punishment code; reenacting s. 775.087(2)(a) and (3)(a), F.S., relating to mandatory minimum sentences for the possession or use of a weapon during the commission of certain offenses, to incorporate the amendments made to s. 893.135, F.S., in a reference thereto; reenacting s. 782.04(1)(a), (3), and (4), F.S., relating to the classification of a murder committed during the commission of certain offenses, to incorporate the amendments made to s. 893.135, F.S., in a reference thereto; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (c) of subsection (1) of section 893.135, Florida Statutes, is amended to read:

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893.135 Trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.—

(1) Except as authorized in this chapter or in chapter 499 and notwithstanding the provisions of s. 893.13:

(c)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of any morphine, opium, ~~oxycodone, hydrocodone,~~ hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 4 grams or more of any mixture containing any such substance, but less than 30 kilograms of such substance or mixture, commits a felony of the first degree, which felony shall be known as "trafficking in illegal drugs," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 4 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, ~~and the defendant~~ shall be ordered to pay a fine of \$50,000.

b. Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years, ~~and the defendant~~ shall be ordered to pay a fine of \$100,000.

c. Is 28 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 ~~calendar~~ years and pay a fine of \$500,000.

2. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in

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actual or constructive possession of, 30 kilograms or more of any morphine, opium, ~~oxycodone, hydrocodone~~, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 30 kilograms or more of any mixture containing any such substance, commits the first degree felony of trafficking in illegal drugs. A person who has been convicted of the first degree felony of trafficking in illegal drugs under this subparagraph shall be punished by life imprisonment and is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release under s. 947.149. However, if the court determines that, in addition to committing any act specified in this paragraph:

a. The person intentionally killed an individual or counseled, commanded, induced, procured, or caused the intentional killing of an individual and such killing was the result; or

b. The person's conduct in committing that act led to a natural, though not inevitable, lethal result,

such person commits the capital felony of trafficking in illegal drugs, punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

3. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 14 grams or more of any oxycodone or hydrocodone, or 14 grams or more of any mixture

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containing any such substance, commits a felony of the first degree, which felony shall be known as "trafficking in illegal prescription drugs," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of \$50,000.

b. Is 28 grams or more, but less than 50 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years and shall be ordered to pay a fine of \$100,000.

c. Is 50 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of \$500,000.

d. Is 200 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of \$750,000.

4.3- Any person who knowingly brings into this state 60 kilograms or more of any morphine, opium, oxycodone, hydrocodone, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 60 kilograms or more of any mixture containing any such substance, and who knows that the probable result of such importation would be the death of any person, commits capital importation of illegal drugs, a capital felony punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.



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Section 2. Paragraphs (f) through (i) of subsection (3) of section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(f) LEVEL 6

Florida Statute	Felony Degree	Description
316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
499.0051(3)	2nd	Knowing forgery of pedigree papers.
499.0051(4)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
499.0051(5)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
775.0875(1)	3rd	Taking firearm from law enforcement officer.

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784.021(1)(a) 3rd Aggravated assault; deadly weapon without intent to kill.

784.021(1)(b) 3rd Aggravated assault; intent to commit felony.

784.041 3rd Felony battery; domestic battery by strangulation.

784.048(3) 3rd Aggravated stalking; credible threat.

784.048(5) 3rd Aggravated stalking of person under 16.

784.07(2)(c) 2nd Aggravated assault on law enforcement officer.

784.074(1)(b) 2nd Aggravated assault on sexually violent predators facility staff.

784.08(2)(b) 2nd Aggravated assault on a person 65 years of

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			age or older.	
136	784.081(2)	2nd	Aggravated assault on specified official or employee.	
137	784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.	
138	784.083(2)	2nd	Aggravated assault on code inspector.	
139	787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.	
140	790.115(2)(d)	2nd	Discharging firearm or weapon on school property.	
141	790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.	
142				

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	790.164(1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.	
143	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.	
144	794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.	
145	794.05(1)	2nd	Unlawful sexual activity with specified minor.	
146	800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender less than 18 years.	
147	800.04(6)(b)	2nd	Lewd or lascivious	

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	7-00124-14		2014360	conduct; offender 18 years of age or older.
148				
	806.031(2)	2nd		Arson resulting in great bodily harm to firefighter or any other person.
149				
	810.02(3)(c)	2nd		Burglary of occupied structure; unarmed; no assault or battery.
150				
	810.145(8)(b)	2nd		Video voyeurism; certain minor victims; 2nd or subsequent offense.
151				
	812.014(2)(b)1.	2nd		Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
152				
	812.014(6)	2nd		Theft; property stolen \$3,000 or more; coordination of others.
153				
	812.015(9)(a)	2nd		Retail theft; property

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	7-00124-14		2014360	stolen \$300 or more; second or subsequent conviction.
154				
	812.015(9)(b)	2nd		Retail theft; property stolen \$3,000 or more; coordination of others.
155				
	812.13(2)(c)	2nd		Robbery, no firearm or other weapon (strong- arm robbery).
156				
	817.4821(5)	2nd		Possess cloning paraphernalia with intent to create cloned cellular telephones.
157				
	825.102(1)	3rd		Abuse of an elderly person or disabled adult.
158				
	825.102(3)(c)	3rd		Neglect of an elderly person or disabled adult.
159				
	825.1025(3)	3rd		Lewd or lascivious molestation of an

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				elderly person or disabled adult.
160	825.103(2)(c)	3rd		Exploiting an elderly person or disabled adult and property is valued at less than \$20,000.
161	827.03(2)(c)	3rd		Abuse of a child.
162	827.03(2)(d)	3rd		Neglect of a child.
163	827.071(2) & (3)	2nd		Use or induce a child in a sexual performance, or promote or direct such performance.
164	836.05	2nd		Threats; extortion.
165	836.10	2nd		Written threats to kill or do bodily injury.
166	843.12	3rd		Aids or assists person to escape.
167	847.011	3rd		Distributing, offering

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	7-00124-14		2014360	
				to distribute, or possessing with intent to distribute obscene materials depicting minors.
168	847.012	3rd		Knowingly using a minor in the production of materials harmful to minors.
169	847.0135(2)	3rd		Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
170	<u>893.135(1)(c)3.a.</u>	<u>1st</u>		<u>Trafficking in illegal prescription drugs, 14 grams or more, less than 28 grams.</u>
171	914.23	2nd		Retaliation against a witness, victim, or informant, with bodily injury.
172	944.35(3)(a)2.	3rd		Committing malicious

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			battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
173	944.40	2nd	Escapes.
174	944.46	3rd	Harboring, concealing, aiding escaped prisoners.
175	944.47(1) (a) 5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
176	951.22(1)	3rd	Intoxicating drug, firearm, or weapon introduced into county facility.
177	(g) LEVEL 7		
178	Florida	Felony	
	Statute	Degree	Description
179			

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	316.027 (1) (b)	1st	Accident involving death, failure to stop; leaving scene.	
180				
	316.193 (3) (c) 2.	3rd	DUI resulting in serious bodily injury.	
181				
	316.1935 (3) (b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.	
182				
	327.35 (3) (c) 2.	3rd	Vessel BUI resulting in serious bodily injury.	
183				
	402.319 (2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.	

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184	7-00124-14	2014360	
	409.920	3rd	Medicaid provider fraud;
	(2) (b) 1.a.		\$10,000 or less.
185	409.920	2nd	Medicaid provider fraud;
	(2) (b) 1.b.		more than \$10,000, but
			less than \$50,000.
186	456.065(2)	3rd	Practicing a health care
			profession without a
			license.
187	456.065(2)	2nd	Practicing a health care
			profession without a
			license which results in
			serious bodily injury.
188	458.327(1)	3rd	Practicing medicine
			without a license.
189	459.013(1)	3rd	Practicing osteopathic
			medicine without a
			license.
190	460.411(1)	3rd	Practicing chiropractic
			medicine without a
			license.
191	461.012(1)	3rd	Practicing podiatric

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			medicine without a
			license.
192	462.17	3rd	Practicing naturopathy
			without a license.
193	463.015(1)	3rd	Practicing optometry
			without a license.
194	464.016(1)	3rd	Practicing nursing
			without a license.
195	465.015(2)	3rd	Practicing pharmacy
			without a license.
196	466.026(1)	3rd	Practicing dentistry or
			dental hygiene without a
			license.
197	467.201	3rd	Practicing midwifery
			without a license.
198	468.366	3rd	Delivering respiratory
			care services without a
			license.
199	483.828(1)	3rd	Practicing as clinical
			laboratory personnel
			without a license.

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200				
	483.901(9)	3rd	Practicing medical physics without a license.	
201				
	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.	
202				
	484.053	3rd	Dispensing hearing aids without a license.	
203				
	494.0018(2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.	
204				
	560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding \$300 but less than \$20,000 by a money services business.	
205				
	560.125(5)(a)	3rd	Money services business	

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				by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
206				
	655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.	
207				
	775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew <u>driver</u> <del>driver's</del> license or identification card; other registration violations.	
208				
	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.	
209				
	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual	

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	7-00124-14		2014360	predator.
210	782.051(3)	2nd		Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
211	782.07(1)	2nd		Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
212	782.071	2nd		Killing of a human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
213	782.072	2nd		Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
214	784.045(1)(a)1.	2nd		Aggravated battery;

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	7-00124-14		2014360	intentionally causing great bodily harm or disfigurement.
215	784.045(1)(a)2.	2nd		Aggravated battery; using deadly weapon.
216	784.045(1)(b)	2nd		Aggravated battery; perpetrator aware victim pregnant.
217	784.048(4)	3rd		Aggravated stalking; violation of injunction or court order.
218	784.048(7)	3rd		Aggravated stalking; violation of court order.
219	784.07(2)(d)	1st		Aggravated battery on law enforcement officer.
220	784.074(1)(a)	1st		Aggravated battery on sexually violent predators facility staff.
221	784.08(2)(a)	1st		Aggravated battery on a person 65 years of age

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	7-00124-14		2014360__
			or older.
222	784.081(1)	1st	Aggravated battery on specified official or employee.
223	784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
224	784.083(1)	1st	Aggravated battery on code inspector.
225	787.06(3)(a)	1st	Human trafficking using coercion for labor and services.
226	787.06(3)(e)	1st	Human trafficking using coercion for labor and services by the transfer or transport of any individual from outside Florida to within the state.
227	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of

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			s. 790.07(1) or (2).
228	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
229	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
230	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
231	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
232	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
233	790.23	1st,PBL	Possession of a firearm

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by a person who  
qualifies for the  
penalty enhancements  
provided for in s.  
874.04.

234

794.08 (4)

3rd

Female genital  
mutilation; consent by a  
parent, guardian, or a  
person in custodial  
authority to a victim  
younger than 18 years of  
age.

235

796.03

2nd

Procuring any person  
under 16 years for  
prostitution.

236

800.04 (5) (c) 1.

2nd

Lewd or lascivious  
molestation; victim less  
than 12 years of age;  
offender less than 18  
years.

237

800.04 (5) (c) 2.

2nd

Lewd or lascivious  
molestation; victim 12  
years of age or older  
but less than 16 years;  
offender 18 years or

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older.

238

806.01 (2)

2nd

Maliciously damage  
structure by fire or  
explosive.

239

810.02 (3) (a)

2nd

Burglary of occupied  
dwelling; unarmed; no  
assault or battery.

240

810.02 (3) (b)

2nd

Burglary of unoccupied  
dwelling; unarmed; no  
assault or battery.

241

810.02 (3) (d)

2nd

Burglary of occupied  
conveyance; unarmed; no  
assault or battery.

242

810.02 (3) (e)

2nd

Burglary of authorized  
emergency vehicle.

243

812.014 (2) (a) 1.

1st

Property stolen, valued  
at \$100,000 or more or a  
semitrailer deployed by  
a law enforcement  
officer; property stolen  
while causing other  
property damage; 1st  
degree grand theft.

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244				
	812.014 (2) (b) 2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.	
245				
	812.014 (2) (b) 3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.	
246				
	812.014 (2) (b) 4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.	
247				
	812.0145 (2) (a)	1st	Theft from person 65 years of age or older; \$50,000 or more.	
248				
	812.019 (2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.	
249				
	812.131 (2) (a)	2nd	Robbery by sudden snatching.	
250				

	7-00124-14		2014360	
	812.133 (2) (b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.	
251				
	817.034 (4) (a) 1.	1st	Communications fraud, value greater than \$50,000.	
252				
	817.234 (8) (a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.	
253				
	817.234 (9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.	
254				
	817.234 (11) (c)	1st	Insurance fraud; property value \$100,000 or more.	
255				
	817.2341 (2) (b) & (3) (b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of	

	7-00124-14		2014360__
			that entity.
256	817.535 (2) (a)	3rd	Filing false lien or other unauthorized document.
257	825.102 (3) (b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
258	825.103 (2) (b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$20,000 or more, but less than \$100,000.
259	827.03 (2) (b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
260	827.04 (3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
261	837.05 (2)	3rd	Giving false information

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	7-00124-14		2014360__
			about alleged capital felony to a law enforcement officer.
262	838.015	2nd	Bribery.
263	838.016	2nd	Unlawful compensation or reward for official behavior.
264	838.021 (3) (a)	2nd	Unlawful harm to a public servant.
265	838.22	2nd	Bid tampering.
266	843.0855 (2)	3rd	Impersonation of a public officer or employee.
267	843.0855 (3)	3rd	Unlawful simulation of legal process.
268	843.0855 (4)	3rd	Intimidation of a public officer or employee.
269	847.0135 (3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.

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270	847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
271	872.06	2nd	Abuse of a dead human body.
272	874.05(2)(b)	1st	Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.
273	874.10	1st,PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
274	893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility,

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			school, or state, county, or municipal park or publicly owned recreational facility or community center.
275	893.13(1)(e)1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.
276	893.13(4)(a)	1st	Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
277	893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
278	893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less

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279 than 200 grams.

893.135 1st Trafficking in illegal  
(1) (c) 1.a. drugs, more than 4  
grams, less than 14  
grams.

280 893.135(1) (c) 3.b. 1st Trafficking in illegal  
prescription drugs, 28  
grams or more, less than  
50 grams.

281 893.135(1) (d) 1. 1st Trafficking in  
phencyclidine, more than  
28 grams, less than 200  
grams.

282 893.135(1) (e) 1. 1st Trafficking in  
methaqualone, more than  
200 grams, less than 5  
kilograms.

283 893.135(1) (f) 1. 1st Trafficking in  
amphetamine, more than  
14 grams, less than 28  
grams.

284 893.135 1st Trafficking in  
(1) (g) 1.a. flunitrazepam, 4 grams

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285 or more, less than 14  
grams.

893.135 1st Trafficking in gamma-  
(1) (h) 1.a. hydroxybutyric acid  
(GHB), 1 kilogram or  
more, less than 5  
kilograms.

286 893.135 1st Trafficking in 1,4-  
(1) (j) 1.a. Butanediol, 1 kilogram  
or more, less than 5  
kilograms.

287 893.135 1st Trafficking in  
(1) (k) 2.a. Phenethylamines, 10  
grams or more, less than  
200 grams.

288 893.1351(2) 2nd Possession of place for  
trafficking in or  
manufacturing of  
controlled substance.

289 896.101(5) (a) 3rd Money laundering,  
financial transactions  
exceeding \$300 but less  
than \$20,000.

290

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	7-00124-14		2014360	
	896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.	
291	943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.	
292	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.	
293	943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.	
294	943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual	

	7-00124-14		2014360	
			offender.	
295	943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.	
296	944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.	
297	944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.	
298	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.	
299	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.	

300	7-00124-14	2014360	
	985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
301	985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
302	985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
303	(h) LEVEL 8		
304	Florida Statute	Felony Degree	Description
305	316.193 (3) (c) 3.a.	2nd	DUI manslaughter.
306	316.1935(4) (b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or

	7-00124-14	2014360	
307			death.
308	327.35(3) (c) 3.	2nd	Vessel BUI manslaughter.
	499.0051(7)	1st	Knowing trafficking in contraband prescription drugs.
309	499.0051(8)	1st	Knowing forgery of prescription labels or prescription drug labels.
310	560.123(8) (b) 2.	2nd	Failure to report currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000 by money transmitter.
311	560.125(5) (b)	2nd	Money transmitter business by unauthorized person, currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000.
312	655.50(10) (b) 2.	2nd	Failure to report



	7-00124-14		2014360	financial transactions totaling or exceeding \$20,000, but less than \$100,000 by financial institutions.
313	777.03(2)(a)	1st		Accessory after the fact, capital felony.
314	782.04(4)	2nd		Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping, aggravated fleeing or eluding with serious bodily injury or death, aircraft piracy, or unlawfully discharging bomb.
315	782.051(2)	1st		Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).
316	782.071(1)(b)	1st		Committing vehicular

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	7-00124-14		2014360	homicide and failing to render aid or give information.
317	782.072(2)	1st		Committing vessel homicide and failing to render aid or give information.
318	787.06(3)(b)	1st		Human trafficking using coercion for commercial sexual activity.
319	787.06(3)(c)	1st		Human trafficking using coercion for labor and services of an unauthorized alien.
320	787.06(3)(f)	1st		Human trafficking using coercion for commercial sexual activity by the transfer or transport of any individual from outside Florida to within the state.
321	790.161(3)	1st		Discharging a destructive device which results in bodily harm

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	7-00124-14		2014360__
			or property damage.
322	794.011(5)	2nd	Sexual battery, victim 12 years or over, offender does not use physical force likely to cause serious injury.
323	794.08(3)	2nd	Female genital mutilation, removal of a victim younger than 18 years of age from this state.
324	800.04(4)	2nd	Lewd or lascivious battery.
325	806.01(1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
326	810.02(2)(a)	1st, PBL	Burglary with assault or battery.
327	810.02(2)(b)	1st, PBL	Burglary; armed with explosives or dangerous weapon.

	7-00124-14		2014360__
328	810.02(2)(c)	1st	Burglary of a dwelling or structure causing structural damage or \$1,000 or more property damage.
329	812.014(2)(a)2.	1st	Property stolen; cargo valued at \$50,000 or more, grand theft in 1st degree.
330	812.13(2)(b)	1st	Robbery with a weapon.
331	812.135(2)(c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.
332	817.535(2)(b)	2nd	Filing false lien or other unauthorized document; second or subsequent offense.
333	817.535(3)(a)	2nd	Filing false lien or other unauthorized document; property owner is a public officer or employee.
334			

	7-00124-14		2014360	
	817.535(4)(a)1.	2nd	Filing false lien or other unauthorized document; defendant is incarcerated or under supervision.	
335	817.535(5)(a)	2nd	Filing false lien or other unauthorized document; owner of the property incurs financial loss as a result of the false instrument.	
336	817.568(6)	2nd	Fraudulent use of personal identification information of an individual under the age of 18.	
337	825.102(2)	1st	Aggravated abuse of an elderly person or disabled adult.	
338	825.1025(2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.	
339				

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	7-00124-14		2014360	
	825.103(2)(a)	1st	Exploiting an elderly person or disabled adult and property is valued at \$100,000 or more.	
340	837.02(2)	2nd	Perjury in official proceedings relating to prosecution of a capital felony.	
341	837.021(2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.	
342	860.121(2)(c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.	
343	860.16	1st	Aircraft piracy.	
344	893.13(1)(b)	1st	Sell or deliver in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).	

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	7-00124-14		2014360__
345	893.13(2)(b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
346	893.13(6)(c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
347	893.135(1)(a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
348	893.135 (1)(b)1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
349	893.135 (1)(c)1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
350	<u>893.135(1)(c)3.c.</u>	<u>1st</u>	<u>Trafficking in illegal</u> <u>prescription drugs, 50</u> <u>grams or more, less than</u> <u>200 grams.</u>
351			

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	7-00124-14		2014360__
	893.135 (1)(d)1.b.	1st	Trafficking in phencyclidine, more than 200 grams, less than 400 grams.
352	893.135 (1)(e)1.b.	1st	Trafficking in methaqualone, more than 5 kilograms, less than 25 kilograms.
353	893.135 (1)(f)1.b.	1st	Trafficking in amphetamine, more than 28 grams, less than 200 grams.
354	893.135 (1)(g)1.b.	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.
355	893.135 (1)(h)1.b.	1st	Trafficking in gamma- hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.
356	893.135 (1)(j)1.b.	1st	Trafficking in 1,4- Butanediol, 5 kilograms or more, less than 10

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357			kilograms.
	893.135	1st	Trafficking in
	(1) (k) 2.b.		Phenethylamines, 200
			grams or more, less than
			400 grams.
358			
	893.1351(3)	1st	Possession of a place
			used to manufacture
			controlled substance
			when minor is present or
			resides there.
359			
	895.03(1)	1st	Use or invest proceeds
			derived from pattern of
			racketeering activity.
360			
	895.03(2)	1st	Acquire or maintain
			through racketeering
			activity any interest in
			or control of any
			enterprise or real
			property.
361			
	895.03(3)	1st	Conduct or participate
			in any enterprise
			through pattern of
			racketeering activity.
362			

	7-00124-14		2014360	
	896.101 (5) (b)	2nd	Money laundering, financial transactions totaling or exceeding \$20,000, but less than \$100,000.	
363	896.104 (4) (a) 2.	2nd	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding \$20,000 but less than \$100,000.	
364				
365	(i) LEVEL 9			
	Florida	Felony		
	Statute	Degree	Description	
366				
	316.193	1st	DUI manslaughter; failing to render aid or give information.	
	(3) (c) 3.b.			
367				
	327.35 (3) (c) 3.b.	1st	BUI manslaughter; failing to render aid or give information.	
368				
	409.920	1st	Medicaid provider fraud; \$50,000 or more.	
	(2) (b) 1.c.			
369				

	7-00124-14		2014360__
370	499.0051(9)	1st	Knowing sale or purchase of contraband prescription drugs resulting in great bodily harm.
	560.123(8)(b)3.	1st	Failure to report currency or payment instruments totaling or exceeding \$100,000 by money transmitter.
371	560.125(5)(c)	1st	Money transmitter business by unauthorized person, currency, or payment instruments totaling or exceeding \$100,000.
372	655.50(10)(b)3.	1st	Failure to report financial transactions totaling or exceeding \$100,000 by financial institution.
373	775.0844	1st	Aggravated white collar crime.
374	782.04(1)	1st	Attempt, conspire, or

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	7-00124-14		2014360__
			solicit to commit premeditated murder.
375	782.04(3)	1st,PBL	Accomplice to murder in connection with arson, sexual battery, robbery, burglary, aggravated fleeing or eluding with serious bodily injury or death, and other specified felonies.
376	782.051(1)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).
377	782.07(2)	1st	Aggravated manslaughter of an elderly person or disabled adult.
378	787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or reward or as a shield or hostage.
379	787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit or facilitate commission of any

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	7-00124-14		2014360__
			felony.
380	787.01(1)(a)4.	1st,PBL	Kidnapping with intent to interfere with performance of any governmental or political function.
381	787.02(3)(a)	1st	False imprisonment; child under age 13; perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.
382	787.06(3)(d)	1st	Human trafficking using coercion for commercial sexual activity of an unauthorized alien.
383	787.06(3)(g)	1st,PBL	Human trafficking for commercial sexual activity of a child under the age of 18.
384	787.06(4)	1st	Selling or buying of minors into human

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			trafficking.
385	790.161	1st	Attempted capital destructive device offense.
386	790.166(2)	1st,PBL	Possessing, selling, using, or attempting to use a weapon of mass destruction.
387	794.011(2)	1st	Attempted sexual battery; victim less than 12 years of age.
388	794.011(2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.
389	794.011(4)	1st	Sexual battery; victim 12 years or older, certain circumstances.
390	794.011(8)(b)	1st	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or

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			custodial authority.
391	794.08(2)	1st	Female genital mutilation; victim younger than 18 years of age.
392	796.035	1st	Selling or buying of minors into prostitution.
393	800.04(5)(b)	Life	Lewd or lascivious molestation; victim less than 12 years; offender 18 years or older.
394	812.13(2)(a)	1st, PBL	Robbery with firearm or other deadly weapon.
395	812.133(2)(a)	1st, PBL	Carjacking; firearm or other deadly weapon.
396	812.135(2)(b)	1st	Home-invasion robbery with weapon.
397	817.535(3)(b)	1st	Filing false lien or other unauthorized document; second or subsequent offense;

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			property owner is a public officer or employee.
398	817.535(4)(a)2.	1st	Filing false claim or other unauthorized document; defendant is incarcerated or under supervision.
399	817.535(5)(b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; owner of the property incurs financial loss as a result of the false instrument.
400	817.568(7)	2nd, PBL	Fraudulent use of personal identification information of an individual under the age of 18 by his or her parent, legal guardian, or person exercising custodial authority.
401	827.03(2)(a)	1st	Aggravated child abuse.

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402				
	847.0145(1)	1st	Selling, or otherwise transferring custody or control, of a minor.	
403				
	847.0145(2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.	
404				
	859.01	1st	Poisoning or introducing bacteria, radioactive materials, viruses, or chemical compounds into food, drink, medicine, or water with intent to kill or injure another person.	
405				
	893.135	1st	Attempted capital trafficking offense.	
406				
	893.135(1)(a)3.	1st	Trafficking in cannabis, more than 10,000 lbs.	
407				
	893.135 (1)(b)1.c.	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.	
408				
	893.135	1st	Trafficking in illegal	

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	(1)(c)1.c.		drugs, more than 28 grams, less than 30 kilograms.	
409				
	<u>893.135(1)(c)3.d.</u>	<u>1st</u>	<u>Trafficking in illegal prescription drugs, 200 grams or more.</u>	
410				
	893.135 (1)(d)1.c.	1st	Trafficking in phencyclidine, more than 400 grams.	
411				
	893.135 (1)(e)1.c.	1st	Trafficking in methaqualone, more than 25 kilograms.	
412				
	893.135 (1)(f)1.c.	1st	Trafficking in amphetamine, more than 200 grams.	
413				
	893.135 (1)(h)1.c.	1st	Trafficking in gamma- hydroxybutyric acid (GHB), 10 kilograms or more.	
414				
	893.135 (1)(j)1.c.	1st	Trafficking in 1,4- Butanediol, 10 kilograms or more.	
415				

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893.135 1st Trafficking in  
(1) (k) 2.c. Phenethylamines, 400  
grams or more.

896.101(5) (c) 1st Money laundering,  
financial instruments  
totaling or exceeding  
\$100,000.

896.104(4) (a) 3. 1st Structuring transactions  
to evade reporting or  
registration  
requirements, financial  
transactions totaling or  
exceeding \$100,000.

Section 3. For the purpose of incorporating the amendment  
made by this act to section 893.135, Florida Statutes, in a  
reference thereto, paragraph (a) of subsection (2) and paragraph  
(a) of subsection (3) of section 775.087, Florida Statutes, are  
reenacted to read:

775.087 Possession or use of weapon; aggravated battery;  
felony reclassification; minimum sentence.—

(2) (a) 1. Any person who is convicted of a felony or an  
attempt to commit a felony, regardless of whether the use of a  
weapon is an element of the felony, and the conviction was for:

a. Murder;

b. Sexual battery;

c. Robbery;

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d. Burglary;

e. Arson;

f. Aggravated assault;

g. Aggravated battery;

h. Kidnapping;

i. Escape;

j. Aircraft piracy;

k. Aggravated child abuse;

l. Aggravated abuse of an elderly person or disabled adult;

m. Unlawful throwing, placing, or discharging of a  
destructive device or bomb;

n. Carjacking;

o. Home-invasion robbery;

p. Aggravated stalking;

q. Trafficking in cannabis, trafficking in cocaine, capital  
importation of cocaine, trafficking in illegal drugs, capital  
importation of illegal drugs, trafficking in phencyclidine,  
capital importation of phencyclidine, trafficking in  
methaqualone, capital importation of methaqualone, trafficking  
in amphetamine, capital importation of amphetamine, trafficking  
in flunitrazepam, trafficking in gamma-hydroxybutyric acid  
(GHB), trafficking in 1,4-Butanediol, trafficking in  
Phenethylamines, or other violation of s. 893.135(1); or

r. Possession of a firearm by a felon

and during the commission of the offense, such person actually  
possessed a "firearm" or "destructive device" as those terms are  
defined in s. 790.001, shall be sentenced to a minimum term of  
imprisonment of 10 years, except that a person who is convicted

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461 for aggravated assault, possession of a firearm by a felon, or  
 462 burglary of a conveyance shall be sentenced to a minimum term of  
 463 imprisonment of 3 years if such person possessed a "firearm" or  
 464 "destructive device" during the commission of the offense.  
 465 However, if an offender who is convicted of the offense of  
 466 possession of a firearm by a felon has a previous conviction of  
 467 committing or attempting to commit a felony listed in s.  
 468 775.084(1)(b)1. and actually possessed a firearm or destructive  
 469 device during the commission of the prior felony, the offender  
 470 shall be sentenced to a minimum term of imprisonment of 10  
 471 years.

472 2. Any person who is convicted of a felony or an attempt to  
 473 commit a felony listed in sub-subparagraphs (a)1.a.-q.,  
 474 regardless of whether the use of a weapon is an element of the  
 475 felony, and during the course of the commission of the felony  
 476 such person discharged a "firearm" or "destructive device" as  
 477 defined in s. 790.001 shall be sentenced to a minimum term of  
 478 imprisonment of 20 years.

479 3. Any person who is convicted of a felony or an attempt to  
 480 commit a felony listed in sub-subparagraphs (a)1.a.-q.,  
 481 regardless of whether the use of a weapon is an element of the  
 482 felony, and during the course of the commission of the felony  
 483 such person discharged a "firearm" or "destructive device" as  
 484 defined in s. 790.001 and, as the result of the discharge, death  
 485 or great bodily harm was inflicted upon any person, the  
 486 convicted person shall be sentenced to a minimum term of  
 487 imprisonment of not less than 25 years and not more than a term  
 488 of imprisonment of life in prison.

489 (3)(a)1. Any person who is convicted of a felony or an

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490 attempt to commit a felony, regardless of whether the use of a  
 491 firearm is an element of the felony, and the conviction was for:  
 492 a. Murder;  
 493 b. Sexual battery;  
 494 c. Robbery;  
 495 d. Burglary;  
 496 e. Arson;  
 497 f. Aggravated assault;  
 498 g. Aggravated battery;  
 499 h. Kidnapping;  
 500 i. Escape;  
 501 j. Sale, manufacture, delivery, or intent to sell,  
 502 manufacture, or deliver any controlled substance;  
 503 k. Aircraft piracy;  
 504 l. Aggravated child abuse;  
 505 m. Aggravated abuse of an elderly person or disabled adult;  
 506 n. Unlawful throwing, placing, or discharging of a  
 507 destructive device or bomb;  
 508 o. Carjacking;  
 509 p. Home-invasion robbery;  
 510 q. Aggravated stalking; or  
 511 r. Trafficking in cannabis, trafficking in cocaine, capital  
 512 importation of cocaine, trafficking in illegal drugs, capital  
 513 importation of illegal drugs, trafficking in phencyclidine,  
 514 capital importation of phencyclidine, trafficking in  
 515 methaqualone, capital importation of methaqualone, trafficking  
 516 in amphetamine, capital importation of amphetamine, trafficking  
 517 in flunitrazepam, trafficking in gamma-hydroxybutyric acid  
 518 (GHB), trafficking in 1,4-Butanediol, trafficking in

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519 Phenethylamines, or other violation of s. 893.135(1);  
 520  
 521 and during the commission of the offense, such person possessed  
 522 a semiautomatic firearm and its high-capacity detachable box  
 523 magazine or a machine gun as defined in s. 790.001, shall be  
 524 sentenced to a minimum term of imprisonment of 15 years.  
 525       2. Any person who is convicted of a felony or an attempt to  
 526 commit a felony listed in subparagraph (a)1., regardless of  
 527 whether the use of a weapon is an element of the felony, and  
 528 during the course of the commission of the felony such person  
 529 discharged a semiautomatic firearm and its high-capacity box  
 530 magazine or a "machine gun" as defined in s. 790.001 shall be  
 531 sentenced to a minimum term of imprisonment of 20 years.  
 532       3. Any person who is convicted of a felony or an attempt to  
 533 commit a felony listed in subparagraph (a)1., regardless of  
 534 whether the use of a weapon is an element of the felony, and  
 535 during the course of the commission of the felony such person  
 536 discharged a semiautomatic firearm and its high-capacity box  
 537 magazine or a "machine gun" as defined in s. 790.001 and, as the  
 538 result of the discharge, death or great bodily harm was  
 539 inflicted upon any person, the convicted person shall be  
 540 sentenced to a minimum term of imprisonment of not less than 25  
 541 years and not more than a term of imprisonment of life in  
 542 prison.  
 543       Section 4. For the purpose of incorporating the amendment  
 544 made by this act to section 893.135, Florida Statutes, in a  
 545 reference thereto, paragraph (a) of subsection (1) and  
 546 subsections (3) and (4) of section 782.04, Florida Statutes, are  
 547 reenacted to read:

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548       782.04 Murder.—  
 549       (1) (a) The unlawful killing of a human being:  
 550       1. When perpetrated from a premeditated design to effect  
 551 the death of the person killed or any human being;  
 552       2. When committed by a person engaged in the perpetration  
 553 of, or in the attempt to perpetrate, any:  
 554       a. Trafficking offense prohibited by s. 893.135(1),  
 555       b. Arson,  
 556       c. Sexual battery,  
 557       d. Robbery,  
 558       e. Burglary,  
 559       f. Kidnapping,  
 560       g. Escape,  
 561       h. Aggravated child abuse,  
 562       i. Aggravated abuse of an elderly person or disabled adult,  
 563       j. Aircraft piracy,  
 564       k. Unlawful throwing, placing, or discharging of a  
 565 destructive device or bomb,  
 566       l. Carjacking,  
 567       m. Home-invasion robbery,  
 568       n. Aggravated stalking,  
 569       o. Murder of another human being,  
 570       p. Resisting an officer with violence to his or her person,  
 571       q. Aggravated fleeing or eluding with serious bodily injury  
 572 or death,  
 573       r. Felony that is an act of terrorism or is in furtherance  
 574 of an act of terrorism; or  
 575       3. Which resulted from the unlawful distribution of any  
 576 substance controlled under s. 893.03(1), cocaine as described in

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577 s. 893.03(2)(a)4., opium or any synthetic or natural salt,  
 578 compound, derivative, or preparation of opium, or methadone by a  
 579 person 18 years of age or older, when such drug is proven to be  
 580 the proximate cause of the death of the user,  
 581  
 582 is murder in the first degree and constitutes a capital felony,  
 583 punishable as provided in s. 775.082.  
 584 (3) When a human being is killed during the perpetration  
 585 of, or during the attempt to perpetrate, any:  
 586 (a) Trafficking offense prohibited by s. 893.135(1),  
 587 (b) Arson,  
 588 (c) Sexual battery,  
 589 (d) Robbery,  
 590 (e) Burglary,  
 591 (f) Kidnapping,  
 592 (g) Escape,  
 593 (h) Aggravated child abuse,  
 594 (i) Aggravated abuse of an elderly person or disabled  
 595 adult,  
 596 (j) Aircraft piracy,  
 597 (k) Unlawful throwing, placing, or discharging of a  
 598 destructive device or bomb,  
 599 (l) Carjacking,  
 600 (m) Home-invasion robbery,  
 601 (n) Aggravated stalking,  
 602 (o) Murder of another human being,  
 603 (p) Aggravated fleeing or eluding with serious bodily  
 604 injury or death,  
 605 (q) Resisting an officer with violence to his or her

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606 person, or  
 607 (r) Felony that is an act of terrorism or is in furtherance  
 608 of an act of terrorism,  
 609  
 610 by a person other than the person engaged in the perpetration of  
 611 or in the attempt to perpetrate such felony, the person  
 612 perpetrating or attempting to perpetrate such felony commits  
 613 murder in the second degree, which constitutes a felony of the  
 614 first degree, punishable by imprisonment for a term of years not  
 615 exceeding life or as provided in s. 775.082, s. 775.083, or s.  
 616 775.084.  
 617 (4) The unlawful killing of a human being, when perpetrated  
 618 without any design to effect death, by a person engaged in the  
 619 perpetration of, or in the attempt to perpetrate, any felony  
 620 other than any:  
 621 (a) Trafficking offense prohibited by s. 893.135(1),  
 622 (b) Arson,  
 623 (c) Sexual battery,  
 624 (d) Robbery,  
 625 (e) Burglary,  
 626 (f) Kidnapping,  
 627 (g) Escape,  
 628 (h) Aggravated child abuse,  
 629 (i) Aggravated abuse of an elderly person or disabled  
 630 adult,  
 631 (j) Aircraft piracy,  
 632 (k) Unlawful throwing, placing, or discharging of a  
 633 destructive device or bomb,  
 634 (l) Unlawful distribution of any substance controlled under

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635 s. 893.03(1), cocaine as described in s. 893.03(2)(a)4., or  
636 opium or any synthetic or natural salt, compound, derivative, or  
637 preparation of opium by a person 18 years of age or older, when  
638 such drug is proven to be the proximate cause of the death of  
639 the user,  
640 (m) Carjacking,  
641 (n) Home-invasion robbery,  
642 (o) Aggravated stalking,  
643 (p) Murder of another human being,  
644 (q) Aggravated fleeing or eluding with serious bodily  
645 injury or death,  
646 (r) Resisting an officer with violence to his or her  
647 person, or  
648 (s) Felony that is an act of terrorism or is in furtherance  
649 of an act of terrorism,  
650  
651 is murder in the third degree and constitutes a felony of the  
652 second degree, punishable as provided in s. 775.082, s. 775.083,  
653 or s. 775.084.  
654 Section 5. This act shall take effect July 1, 2014.

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/8/14  
Meeting Date

Topic Sentencing & Control Substances Violation

Bill Number 3600  
(if applicable)

Name Lisa Anderson

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Attorney

Address 460 Main St  
Street

Phone 954/628-2303

Paramar City FL 32401  
City State Zip

E-mail LisaAndersonLaw@gmail.com

Speaking: ☒ For ☐ Against ☒ Information

Representing FACDL Florida Association of Criminal Defense Lawyers

Appearing at request of Chair: ☐ Yes ☐ No  
Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.  
This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

1/8/14

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic DRUG TRAFFICKING

Bill Number 360  
(if applicable)

Name MONICA HOFHEINZ

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title ASST. STATE ATTORNEY

Address 201 SE 6th  
Street

Phone \_\_\_\_\_

FTL  
City State Zip

E-mail \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

Representing FLORIDA PROSECUTORS

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)



THE FLORIDA SENATE  
**APPEARANCE RECORD**

8 Jan 2014

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Topic Sentencing for Controlled Sub Viol Bill Number 360  
(if applicable)

Name Jill Gran (Waiver Support) Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Legislative

Address 2868 Mahan Dr Phone 850 878 2190  
Street

Tallahassee FL 32309 E-mail jill@fadaa.org  
City State Zip

Speaking: ☒ For ☐ Against ☐ Information

Representing FL Alcohol & Drug Abuse Association

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/8/13

Meeting Date

Topic Drug Trafficking

Bill Number SB 360  
(if applicable)

Name Greg Newburn

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Florida Project Director

Address PO Box 142933

Phone 352.682.2542

Gainesville, FL 32614  
City State Zip

E-mail gnewburn@fam.ks.gov

Speaking: ☒ For ☐ Against ☐ Information

Representing Families Against Mandatory Minimums

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/20/11)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

*Meeting Date* \_\_\_\_\_

Topic Sentencing Reform

Bill Number 360  
(if applicable)

Name Bob Dillinger

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Public Defender 6<sup>th</sup>

Address 14250 49<sup>th</sup> St N

Phone 774-44-6866

*Street* Cluter *City* 33762 *State*  *Zip*

E-mail pd6@wagvthehope.org

Speaking: ☒ For ☐ Against ☐ Information

Representing PD Assoc

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/20/11)



The Florida Senate

## Committee Agenda Request

**To:** Senator Greg Evers, Chair  
Committee on Criminal Justice

**Subject:** Committee Agenda Request

**Date:** December 9, 2013

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I respectfully request that **Senate Bill # 360 and Senate Bill # 384**, relating to Sentencing for Controlled Substance Violations and Juvenile Sentencing, be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

A handwritten signature in black ink, appearing to read "Rob Bradley", is written over a horizontal line.

Senator Rob Bradley  
Florida Senate, District 7

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Criminal Justice

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BILL: SB 384

INTRODUCER: Senator Bradley

SUBJECT: Juvenile Sentencing

DATE: January 3, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	<b>Favorable</b>
2.			JU	
3.			ACJ	
4.			AP	

---

## I. Summary:

SB 384 conforms Florida law concerning the sentencing of juvenile offenders to the requirements of the Eighth Amendment as set forth in recent opinions of the United States Supreme Court. It provides that any offender who is convicted of murder committed before he or she was 18 years old can be sentenced to life imprisonment only after a mandatory hearing at which the judge considers specified factors relating to the offender's age and attendant circumstances. For capital offenses, the judge must impose a minimum sentence of at least 35 years if life imprisonment is not appropriate.

The bill also provides for a judicial hearing to review any sentence of more than 25 years (including a life sentence) that is imposed for a non-homicide offense committed when the offender was less than 18 years old. The offender may request the sentence review after serving 25 years of the sentence. If the reviewing court determines that the offender has been rehabilitated and is fit to reenter society, the offender must be released with a modified sentence that requires serving a minimum term of 5 years of probation. Otherwise, the court must enter a written order stating the reasons for not modifying the sentence.

This bill has an effective date of July 1, 2014.

## II. Present Situation:

In recent years, the U.S. Supreme Court has issued several opinions addressing the application of the Eighth Amendment's prohibition against cruel and unusual punishment in relation to the punishment of juvenile offenders.<sup>1</sup> The first of these was *Roper v. Simmons*, 543 U. S. 551

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<sup>1</sup> The term "juvenile offender" refers to an offender who was under 18 years of age at the time of committing the offense for which he or she was sentenced. Most crimes committed by juveniles are dealt with through delinquency proceedings as set forth in ch. 985, F.S. However, the law provides a mechanism for juveniles to be tried and handled as adults. A juvenile who

(2005), in which the Court found that juvenile offenders cannot be subject to the death penalty for any offense. More recently, the Court expanded constitutional doctrine regarding punishment of juvenile offenders in *Graham v. Florida*, 130 S.Ct. 2011 (2010) and *Miller v. Alabama*, 132 S.Ct. 2455 (2012).

### **Graham v. Florida**

In *Graham*, the Court held that a juvenile offender cannot be sentenced to life in prison without the possibility of parole for any offense other than a homicide. More specifically, the Court found that if a non-homicide juvenile offender is sentenced to life in prison, the state must “provide him or her with some realistic opportunity to obtain release before the end of that term.”<sup>2</sup> Because Florida has abolished parole<sup>3</sup> and the Court deems the possibility of executive clemency to be remote,<sup>4</sup> currently a juvenile offender in Florida cannot be given a life sentence for a non-homicide offense.

*Graham* applies retroactively to previously sentenced offenders because it established a fundamental constitutional right.<sup>5</sup> Therefore, a juvenile offender who is serving a life sentence for a non-homicide offense that was committed after parole eligibility was eliminated is entitled to be resentenced to a term less than life.

The Supreme Court did not give any guidance as to the maximum permissible sentence for a non-homicide juvenile offender other than to exclude the possibility of life without parole. This has led to different results among the circuits in reviewing sentences for a lengthy term of years. The First Circuit Court of Appeal recognizes that a lengthy term of years is a *de facto* life sentence if it exceeds the juvenile offender’s life expectancy.<sup>6</sup> On the other hand, the Fourth and Fifth Circuit Courts of Appeal have strictly construed *Graham* to apply only to life sentences and not to affect sentences for a lengthy term of years.<sup>7</sup>

On September 17, 2013, the Florida Supreme Court heard oral argument in *Gridine v. State*, 89 So.3d 909 (Fla. 1st Dist. 2011) and *Henry v. State*, 82 So.3d 1084 (Fla. 5th Dist. 2012). In *Gridine*, the First District Court of Appeal found that a 70 year sentence was not the equivalent

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commits a crime while 13 years old or younger may only be tried as an adult if a grand jury indictment is returned. A juvenile who is more than 13 years old may be tried as an adult for certain felony offenses if a grand jury indictment is returned, if juvenile court jurisdiction is waived and the case is transferred for prosecution as an adult pursuant to s. 985.556, F.S., or if the state attorney direct files an information in adult court pursuant to s. 985.557, F.S. Regardless of age, s. 985.58, F.S., requires a grand jury indictment to try a juvenile as an adult for an offense that is punishable by death or life imprisonment.

<sup>2</sup> *Graham* at 2034

<sup>3</sup> Parole was abolished in 1983 for all non-capital felonies committed on or after October 1, 1983, and was completely abolished in 1995 for any offense committed on or after October 1, 1995.

<sup>4</sup> *Graham* at 2027

<sup>5</sup> See, e.g., *St. Val v. State*, 107 So.3d 553 (Fla. 4th DCA 2012); *Manuel v. State*, 48 So.3d 94 (Fla. 2d DCA 2010).

<sup>6</sup> *Adams v. State*, --- So.3d ---, 37 Fla.L.Weekly D1865 (Fla. 1st DCA 2012). The First District Court of Appeal has struck down sentences of 60 years (*Adams*) and 80 years (*Floyd v. State*, 87 So.3d 45 (Fla. 1st DCA 2012)), while approving sentences of 50 years (*Thomas v. State*, 78 So.3d 644 (Fla. 1st DCA 2011)) and 70 years (*Gridine v. State*, 89 So.3d 909 (Fla. 1st DCA 2011)).

<sup>7</sup> See *Guzman v. State*, 110 So.3d 480 (Fla. 4th Dist. 2013); *Henry v. State*, 82 So.3d 1084 (Fla. 5th DCA 2012). It also appears that the Second District Court of Appeal may agree with this line of reasoning - see *Young v. State*, 110 So.3d 931 (Fla. 2d Dist. 2013).

of life. In *Henry*, the Fifth District Court of Appeal upheld a sentence of 90 years because *Graham* does not prohibit a lengthy term of years.

### **Miller v. Alabama**

In *Miller*, the Court held that juvenile offenders who commit homicide cannot be sentenced to life in prison without the possibility of parole as the result of a mandatory sentencing scheme. The Court did not find that the Eighth Amendment prohibits sentencing a juvenile murderer to life without parole, but rather that individualized consideration of factors related to the offender's age must be considered before a life without parole sentence can be imposed. The Court also indicated that it expects that few juvenile offenders will be found to merit life without parole sentences.

The majority opinion in *Miller* noted that mandatory life-without-parole sentences “preclude a sentencer from taking account of an offender’s age and the wealth of characteristics and circumstances attendant to it.”<sup>8</sup> Although the Court did not require consideration of specific factors, it highlighted the following concerns:

Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys. See, e.g., *Graham*, 560 U.S., at —, 130 S.Ct., at 2032 (“[T]he features that distinguish juveniles from adults also put them at a significant disadvantage in criminal proceedings”); *J.D.B. v. North Carolina*, 564 U.S. —, —, 131 S.Ct. 2394, 2400–2401, 180 L.Ed.2d 310 (2011) (discussing children’s responses to interrogation). And finally, this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it.<sup>9</sup>

Section 775.082, F.S., provides that the only permissible punishments for a capital offense are the death penalty or life imprisonment. As the result of the Court’s holdings in *Roper* (invalidating the death penalty for juvenile offenders) and *Miller*, there is currently no statutory punishment for a juvenile who commits capital murder. In *Horsley v. State*, 121 So.3d 494 (Fla. 5th Dist. 2013), the Fifth District Court of Appeal applied the principle of statutory revival in concluding that the only possible sentence for a juvenile convicted of capital murder is life with

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<sup>8</sup> *Miller* at 2467.

<sup>9</sup> *Miller* at 2468.

the possibility of parole after 25 years.<sup>10</sup> The Florida Supreme Court has accepted jurisdiction of *Horsley* to address the question of whether *Miller* operates to revive this earlier sentence previously contained in the 1993 statute.<sup>11</sup>

Other state and federal courts have issued differing opinions as to whether *Miller* applies retroactively, but there is agreement among Florida appellate courts that have addressed this question. The First and Third District Courts of Appeal view *Miller* as a procedural change in the law that does not apply retroactively to sentences that were final before the opinion was issued.<sup>12</sup> The other District Courts of Appeal and the Florida Supreme Court have not addressed the retroactivity issue.<sup>13</sup> However, the Florida Supreme Court has scheduled oral argument on March 6, 2014 to address the question of whether *Miller* should be given retroactive effect.<sup>14</sup>

### **Graham and Miller Inmates**

The Department of Corrections reports that it has custody of 222 juvenile offenders who received a mandatory life sentence for capital murder (*Miller* inmates); 43 inmates who received life sentences for non-homicide offenses (*Graham* inmates);<sup>15</sup> and 39 inmates who received life sentences for committing second degree murder, but who could have been sentenced to a lesser term.<sup>16</sup>

### **Life Expectancy**

The Center for Disease Control's United States Life Tables for 2008 (the most recent published) reflect the following remaining life expectancies for 17-18 year olds in the United States:<sup>17</sup>

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<sup>10</sup> Life with the possibility of parole after 25 years is the penalty for capital murder under the 1993 version of s. 775.082(1), F.S., the most recent capital murder penalty statute that is constitutional under *Miller* when applied to a juvenile offender.

<sup>11</sup> *Id.*

<sup>12</sup> See *Gonzalez v. State*, 101 So.3d 886 (Fla. 1st DCA 2012); *Geter v. State*, 115 So.3d 385 (Fla. 3d DCA 2012).

<sup>13</sup> The United States Court of Appeals for the Eleventh Circuit, whose geographical jurisdiction includes cases arising in Florida, has also held that *Miller* does not apply retroactively to cases that are not on direct appeal (*In re Morgan*, 713 F.3d 1365 (11th Cir. 2013)).

<sup>14</sup> The Court will be considering the appeal of *Falcon v. Graham*, 111 So.3d 973 (Fla. 1st Dist. 2013).

<sup>15</sup> This includes inmates who were sentenced for attempted murder. In *Manuel v. State*, 48 So.3d 94 (Fla. 2d DCA 2010), the Second District Court of Appeals held that attempted murder is a nonhomicide offense because the act did not result in the death of a human being.

<sup>16</sup> The information is derived from an attachment to an e-mail dated March 22, 2013 from Department of Corrections (DOC) staff to Senate Criminal Justice Committee staff, which is on file with the Senate Criminal Justice Committee. A follow-up e-mail dated January 3, 2014 from DOC staff (on file with Senate Criminal Justice Committee) indicates there have been no significant changes in this information.

<sup>17</sup> The information is from Tables 5, 6, 8, 9, 11 and 12 in the *United States Life Tables, 2008*, National Vital Statistics Reports, Volume 61, Number 3 (September 24, 2012), available at [www.cdc.gov/nchs/data/nvsr/nvsr61/nvsr61\\_03.pdf](http://www.cdc.gov/nchs/data/nvsr/nvsr61/nvsr61_03.pdf) (last visited on January 2, 2014).



<b>Remaining Life Expectancy: 17-18 Year Old Persons in the United States</b>	
Hispanic Females	67.0 years
White Females	64.5 years
Hispanic Males	62.1 years
Black Females	61.3 years
White Males	59.8 years
Black Males	54.9 years

### **Parole**

A January 2008 Blueprint Commission and Department of Juvenile Justice report, “Getting Smart about Juvenile Justice in Florida,” included a recommendation that juveniles who received more than a 10 year adult prison sentence should be eligible for parole consideration. Florida Tax Watch also recommended parole consideration for inmates who were under 18 when they committed their offense, have served more than 10 years, were not convicted of capital murder, have no prior record, and demonstrated exemplary behavior while in prison.<sup>18</sup>

### **III. Effect of Proposed Changes:**

The bill amends s. 775.082, F.S., to conform Florida law concerning the sentencing of juvenile offenders to the requirements of the Eighth Amendment set forth by the United States Supreme Court in *Graham v. Florida*, 130 S.Ct. 2011 (2010) and *Miller v. Alabama*, 132 S.Ct. 2455 (2012). It does so by: (1) making procedural changes at the sentencing phase for juvenile offenders who are convicted of a murder for which they can be imprisoned for life; and (2) creating a procedure to review the sentence of juvenile offenders after they are incarcerated for 25 years if they are serving a sentence for committing a non-homicide offense.

#### ***Graham* Defendants**

The bill does not change the procedure for original sentencing of juvenile offenders for non-homicide offenses. However, it gives juvenile offenders who are sentenced to more than 25 years (including those sentenced to life) the opportunity to have a resentencing hearing after 25 years of incarceration. The bill requires the Department of Correction to notify the offender of the right to have a resentencing hearing 18 months before the beginning of his or her 25th year of incarceration. If the offender requests the resentencing hearing, the sentencing court must hold a hearing at which it considers:

- Whether the offender demonstrates maturity and rehabilitation.
- Whether the offender is at the same level of risk to society as at the time of the initial sentencing.
- The opinion of the victim or the victim’s next of kin, including previous statements made during the trial or initial sentencing phase if the victim or the next of kin chooses not to participate in the resentencing hearing.

<sup>18</sup> “Report and Recommendations of the Florida Tax Watch Government Cost Savings Task Force to Save More than \$3 Billion,” Florida Tax Watch, March 2010, p.47.

- Whether the offender was a relatively minor participant in the criminal offense or acted under extreme duress or the domination of another person.
- Whether the offender has shown sincere and sustained remorse for the criminal offense.
- Whether the offender's age, maturity, and psychological development at the time of the offense affected his or her behavior.
- Whether the offender has successfully obtained a general educational development certificate or completed another educational, technical, work, vocational, or self-rehabilitation program, if available.
- Whether the offender was a victim of sexual, physical, or emotional abuse before committing the offense.
- The results of any mental health assessment, risk assessment, or evaluation of the offender as to rehabilitation.

If the court finds that the offender has been rehabilitated and reasonably believes that the offender is fit to reenter society, it must impose a probationary term of at least 5 years. Otherwise, it must enter a written order stating the reasons for not modifying the sentence.

The bill does not expressly state whether its provision relating to a 25-year resentencing hearing for non-homicide offenders is intended to apply retroactively. Therefore, it is presumed to apply prospectively.<sup>19</sup> It is unclear, however, whether it is intended to apply only to those offenders whose offenses are committed after the effective date of the bill or to all offenders who have not served 25 years of imprisonment prior to the effective date.

### ***Miller* defendants and other juvenile offenders who commit homicide**

The bill provides for a mandatory sentencing hearing to determine whether a juvenile offender who is convicted of a capital felony (or an offense that is reclassified as a capital felony) will be sentenced to life imprisonment. The bill requires the court to sentence the juvenile offender to life imprisonment if it concludes that life imprisonment is appropriate. In making its determination, the court must consider the following factors that reflect the areas of concern expressed by the United States Supreme Court in *Miller*:

- The nature and circumstances of the offense committed by the defendant.
- The effect of the crime on the victim's family and on the community.
- The defendant's age, maturity, intellectual capacity, and mental and emotional health at the time of the offense.
- The defendant's background, including his or her family, home, and community environment.
- The effect, if any, of immaturity, impetuosity, or failure to appreciate risks and consequences on the defendant's participation in the offense.
- The extent of the defendant's participation in the offense.
- The effect, if any, of familial pressure or peer pressure on the defendant's actions.
- The nature and extent of the defendant's prior criminal history.

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<sup>19</sup> See *Metropolitan Dade County v. Chase Federal Housing Corp.*, 737 So.2d 494, 499 (Fla. 1999); *Bates v. State*, 750 So.2d 6, 10 (Fla. 1999).

- The effect, if any, of characteristics attributable to the defendant's youth on the defendant's judgment.
- The possibility of rehabilitating the defendant.

If the sentencing court concludes that life imprisonment is not appropriate, it must sentence the offender to imprisonment for a term of at least 35 years.

The sentencing court must also consider the above factors in sentencing a juvenile offender who has been convicted of murder under s. 782.04, F.S., which is classified as a life felony or a first-degree felony punishable by a term of years not exceeding life imprisonment. Such an offender can only be sentenced to life imprisonment or to imprisonment for a term of years equal to life imprisonment<sup>20</sup> if the court considers the factors and concludes that a life sentence is appropriate.<sup>21</sup> If the court concludes that a life sentence is inappropriate, it is not required to sentence the offender to a minimum of 35 years as it is in capital cases.

The bill does not state whether this provision relating to juvenile murderers is intended to apply retroactively. Therefore, it is presumed to apply prospectively.<sup>22</sup> The implications of this with regard to those convicted of murders for which a life sentence is mandatory are discussed in paragraph D of the "Constitutional Issues" section of this analysis.

### **Correction of Cross-references**

Sections 3, 4, 5, and 6 of the bill correct cross-references to s. 775.082(3), F.S., that are found in s. 316.3026(2), F.S., s. 373.430(3), F.S., s. 403.161(3), F.S., and s. 648.571(3), F.S., respectively. The corrections are non-substantive and are required by the renumbering of paragraphs in s. 775.082(3), F.S., due to the insertion of a new paragraph (b).

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

### **C. Trust Funds Restrictions:**

None.

<sup>20</sup> The bill creates the phrase "term of years equal to life imprisonment," leaving the courts to decide whether a particular term of years is the equivalent of a life sentence.

<sup>21</sup> Although *Miller* technically does not apply to non-mandatory life sentences, requiring consideration of the sentencing factors avoids the possibility of an equal protection claim by a juvenile offender who receives a life sentence after less consideration than is required for a juvenile offender who commits a more serious offense.

<sup>22</sup> See footnote 19.

D. Other Constitutional Issues:

**Retroactivity of Provisions Relating to *Miller* (Section 1 of the bill)**

The bill does not specify whether its provisions are intended to apply retroactively or prospectively. A change in a statute is presumed to operate prospectively unless there is a clear showing that it is to be applied retroactively and its retroactive application is constitutionally permissible. *Metropolitan Dade County v. Chase Federal Housing Corp.*, 737 So.2d 494, 499 (Fla. 1999); *Bates v. State*, 750 So.2d 6, 10 (Fla. 1999).

Article X, section 9 of the Florida Constitution (the “Savings Clause”) provides: “Repeal or amendment of a criminal statute shall not affect prosecution or punishment for any crime previously committed.” This means that the criminal statutes in effect at the time an offense was committed apply to any prosecution or punishment for that offense. *See State v. Smiley*, 966 So.2d 330 (Fla. 2007). The Savings Clause prevents retroactive application of a statute that affects prosecution or punishment for a crime, but does not prohibit retroactive application of a statute that is procedural or remedial in nature.

It is well-established that the Savings Clause prohibits application of a statutory reduction in the maximum sentence for a crime to be applied to an offense that was committed before the change. *See, e.g., Castle v. Sand*, 330 So.2d 10 (Fla. 1976) (reduction of maximum sentence for arson from 10 years to 5 years could not be applied to benefit defendant who committed offense before statutory change). However, it is likely that the provisions of the Savings Clause in the Florida Constitution would be trumped by a constitutional imperative of the United States Constitution if there is no way to satisfy both clauses.

Florida opinions by the First and Third District Courts of Appeal currently indicate that *Miller* does not apply retroactively to juvenile offenders who were sentenced to a mandatory life sentence for murder if their appeals were final before the *Miller* opinion was issued.<sup>23</sup> Applying this case law, the Savings Clause, and the principle that a law is considered to operate prospectively unless it specifically states that it is to be applied retroactively, it appears the following statements can be made:

- The bill does not apply retroactively because it does not expressly state that it is intended to apply retroactively. Additionally, retroactive application of this provision would violate the Savings Clause because it creates a new penalty that affects the punishment for previously committed offenses.
- The bill should not affect the situation of juvenile offenders who were sentenced to a mandatory life sentence for murder and whose appeals were final before *Miller* based on the previously discussed Florida district court cases. (However, the Florida Supreme Court will have an opportunity to definitively address this issue when hearing oral argument on March 6, 2014.)<sup>24</sup>

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<sup>23</sup> See footnote 12.

<sup>24</sup> See footnote 14.

- The bill applies prospectively to juvenile offenders who commit capital murder after the effective date. For this group, the bill resolves the problem created by the lack of statutory guidance resulting from the unconstitutionality of the statute as applied to them.
- Because the bill does not apply retroactively, it does not resolve the sentencing problem with regard to juveniles convicted of a murder for which a life sentence is mandatory in the following situations: (1) the offense was or will be committed before the bill's effective date; and (2) the offender's appeals were not final before *Miller*. However, the Florida Supreme Court could find that *Miller* should be given retroactive effect and/or that the Legislature intended for the bill to apply retroactively to this group because Section 1 appears to be intended to resolve the current lack of a constitutionally-acceptable sentence alternative to mandatory life imprisonment. In such case, or if the bill were amended to expressly apply retroactively to this group, it appears that the constitutional requirement to comply with *Miller* would override the Savings Clause violation.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC) has not yet considered whether the bill will have an impact on the need for prison beds. The bill will potentially have an impact on the court system to the extent that sentencing and resentencing hearings for offenders affected by the bill may require more time and resources than current sentencing proceedings. However, according to the State Courts Administrator, any such fiscal impact is indeterminate at this time.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 775.082 of the Florida Statutes. This bill creates an unnumbered section of the Florida Statutes. This bill amends the following sections of the Florida Statutes to conform to cross-references: 316.3026, 373.430, 403.161, and 648.571.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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By Senator Bradley

7-00151B-14

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A bill to be entitled

An act relating to juvenile sentencing; amending s. 775.082, F.S.; providing criminal sentences applicable to a person who was under the age of 18 years at the time the offense was committed; requiring a judge to consider certain factors before determining if life imprisonment is an appropriate sentence for a homicide defendant; providing for review of sentences of certain offenders who were under the age of 18 at the time of the offense; providing requirements and procedures for such reviews; amending ss. 316.3026, 373.430, 403.161, and 648.571, F.S.; conforming cross-references; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (1) and (3) of section 775.082, Florida Statutes, are amended to read:

775.082 Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.—

(1)(a) Except as provided in paragraph (b), a person who has been convicted of a capital felony shall be punished by death if the proceeding held to determine sentence according to the procedure set forth in s. 921.141 results in findings by the court that such person shall be punished by death, otherwise such person shall be punished by life imprisonment and shall be ineligible for parole.

(b) For offenses committed before the offender attained 18

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years of age, a person who is convicted of a capital felony or an offense that was reclassified as a capital felony shall be punished by life imprisonment and is ineligible for parole if the judge at a mandatory sentencing hearing concludes that life imprisonment is an appropriate sentence. In determining whether life imprisonment is an appropriate sentence, the judge shall consider factors relevant to the offense and to the defendant's youth and attendant circumstances, including, but not limited to:

1. The nature and circumstances of the offense committed by the defendant.

2. The effect of the crime on the victim's family and on the community.

3. The defendant's age, maturity, intellectual capacity, and mental and emotional health at the time of the offense.

4. The defendant's background, including his or her family, home, and community environment.

5. The effect, if any, of immaturity, impetuosity, or failure to appreciate risks and consequences on the defendant's participation in the offense.

6. The extent of the defendant's participation in the offense.

7. The effect, if any, of familial pressure or peer pressure on the defendant's actions.

8. The nature and extent of the defendant's prior criminal history.

9. The effect, if any, of characteristics attributable to the defendant's youth on the defendant's judgment.

10. The possibility of rehabilitating the defendant.

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If the judge concludes that life imprisonment is not an appropriate sentence, the defendant shall be punished by imprisonment for a term of not less than 35 years.

(3) A person who has been convicted of any other designated felony may be punished as follows:

(a)1. For a life felony committed ~~before~~ prior to October 1, 1983, by a term of imprisonment for life or for a term of years not less than 30.

2. For a life felony committed on or after October 1, 1983, by a term of imprisonment for life or by a term of imprisonment not exceeding 40 years.

3. Except as provided in subparagraph 4., for a life felony committed on or after July 1, 1995, by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment.

4.a. Except as provided in sub-subparagraph b., for a life felony committed on or after September 1, 2005, which is a violation of s. 800.04(5)(b), by:

(I) A term of imprisonment for life; or

(II) A split sentence that is a term of not less than 25 years' imprisonment and not exceeding life imprisonment, followed by probation or community control for the remainder of the person's natural life, as provided in s. 948.012(4).

b. For a life felony committed on or after July 1, 2008, which is a person's second or subsequent violation of s. 800.04(5)(b), by a term of imprisonment for life.

(b) Notwithstanding paragraph (a), for offenses committed before the offender attained 18 years of age, a person convicted

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under s. 782.04 of an offense that was reclassified as a life felony is eligible to be punished by life imprisonment or by imprisonment for a term of years equal to life imprisonment if the judge at a mandatory sentencing hearing considers factors relevant to the offense and to the defendant's youth and attendant circumstances, including, but not limited to, the factors listed in paragraph (1)(b), and concludes that imprisonment for life or a term of years equal to life imprisonment is an appropriate sentence.

(c) ~~(b)~~ For a felony of the first degree, by a term of imprisonment not exceeding 30 years or, when specifically provided by statute, by imprisonment for a term of years not exceeding life imprisonment. However, for offenses committed before the offender attained 18 years of age, a person convicted under s. 782.04 of a first-degree felony punishable by a term of years not exceeding life imprisonment or an offense that was reclassified as a first-degree felony punishable by a term of years not exceeding life imprisonment is eligible for a term of years equal to life imprisonment only if the judge at a mandatory sentencing hearing considers factors relevant to the offense and to the defendant's youth and attendant circumstances, including, but not limited to, the factors specified in paragraph (1)(b), and concludes that a term of years equal to life imprisonment is an appropriate sentence.

(d) ~~(c)~~ For a felony of the second degree, by a term of imprisonment not exceeding 15 years.

(e) ~~(d)~~ For a felony of the third degree, by a term of imprisonment not exceeding 5 years.

Section 2. (1) For offenses committed before the offender



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attained 18 years of age, a person who is sentenced to life imprisonment, imprisonment for life, or imprisonment for a term of more than 25 years for any offense that is not included in s. 782.04, Florida Statutes, is entitled to a review of his or her sentence after 25 years. The sentencing court shall retain original jurisdiction for the duration of the sentence for this purpose.

(2) The Department of Corrections shall notify a juvenile offender who is committed to the department of his or her eligibility to participate in a resentencing hearing 18 months before the beginning of his or her 25th year of incarceration. The juvenile offender may apply to the court of original jurisdiction requesting that a resentencing hearing be held.

(3) An offender is entitled to be represented by counsel, and the court shall appoint a public defender to represent the offender if the offender cannot afford an attorney.

(4) The court shall hold a resentencing hearing to determine whether the offender's sentence should be modified. The resentencing court shall consider all of the following:

(a) Whether the offender demonstrates maturity and rehabilitation.

(b) Whether the offender remains at the same level of risk to society as he or she did at the time of the initial sentencing.

(c) The opinion of the victim or the victim's next of kin. The absence of the victim or the victim's next of kin from the resentencing hearing may not be a factor in the court's determination under this section. If the victim or the victim's next of kin chooses not to participate in the hearing, the court

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may consider previous statements made by the victim or the victim's next of kin during the trial or initial sentencing phase.

(d) Whether the offender was a relatively minor participant in the criminal offense or acted under extreme duress or the domination of another person.

(e) Whether the offender has shown sincere and sustained remorse for the criminal offense.

(f) Whether the offender's age, maturity, and psychological development at the time of the offense affected his or her behavior.

(g) Whether the offender has successfully obtained a general educational development certificate or completed another educational, technical, work, vocational, or self-rehabilitation program, if such a program is available.

(h) Whether the offender was a victim of sexual, physical, or emotional abuse before he or she committed the offense.

(i) The results of any mental health assessment, risk assessment, or evaluation of the offender as to rehabilitation.

(5) If the court determines at the resentencing hearing that the offender has been rehabilitated and is reasonably believed to be fit to reenter society based on these factors, a term of probation of at least 5 years shall be imposed. If the court determines that the offender has not demonstrated rehabilitation and is not fit to reenter society based on these factors, the court shall issue an order in writing stating the reasons why the sentence is not being modified.

Section 3. Subsection (2) of section 316.3026, Florida Statutes, is amended to read:

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175 316.3026 Unlawful operation of motor carriers.—  
 176 (2) Any motor carrier enjoined or prohibited from operating  
 177 by an out-of-service order by this state, any other state, or  
 178 the Federal Motor Carrier Safety Administration may not operate  
 179 on the roadways of this state until the motor carrier has been  
 180 authorized to resume operations by the originating enforcement  
 181 jurisdiction. Commercial motor vehicles owned or operated by any  
 182 motor carrier prohibited from operation found on the roadways of  
 183 this state shall be placed out of service by law enforcement  
 184 officers of the Department of Highway Safety and Motor Vehicles,  
 185 and the motor carrier assessed a \$10,000 civil penalty pursuant  
 186 to 49 C.F.R. s. 383.53, in addition to any other penalties  
 187 imposed on the driver or other responsible person. Any person  
 188 who knowingly drives, operates, or causes to be operated any  
 189 commercial motor vehicle in violation of an out-of-service order  
 190 issued by the department in accordance with this section commits  
 191 a felony of the third degree, punishable as provided in s.  
 192 775.082(3)(e) ~~775.082(3)(d)~~. Any costs associated with the  
 193 impoundment or storage of such vehicles are the responsibility  
 194 of the motor carrier. Vehicle out-of-service orders may be  
 195 rescinded when the department receives proof of authorization  
 196 for the motor carrier to resume operation.  
 197 Section 4. Subsection (3) of section 373.430, Florida  
 198 Statutes, is amended to read:  
 199 373.430 Prohibitions, violation, penalty, intent.—  
 200 (3) Any person who willfully commits a violation specified  
 201 in paragraph (1)(a) is guilty of a felony of the third degree,  
 202 punishable as provided in ss. 775.082(3)(e) ~~775.082(3)(d)~~ and  
 203 775.083(1)(g), by a fine of not more than \$50,000 or by

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204 imprisonment for 5 years, or by both, for each offense. Each day  
 205 during any portion of which such violation occurs constitutes a  
 206 separate offense.  
 207 Section 5. Subsection (3) of section 403.161, Florida  
 208 Statutes, is amended to read:  
 209 403.161 Prohibitions, violation, penalty, intent.—  
 210 (3) Any person who willfully commits a violation specified  
 211 in paragraph (1)(a) is guilty of a felony of the third degree  
 212 punishable as provided in ss. 775.082(3)(e) ~~775.082(3)(d)~~ and  
 213 775.083(1)(g) by a fine of not more than \$50,000 or by  
 214 imprisonment for 5 years, or by both, for each offense. Each day  
 215 during any portion of which such violation occurs constitutes a  
 216 separate offense.  
 217 Section 6. Paragraph (c) of subsection (3) of section  
 218 648.571, Florida Statutes, is amended to read:  
 219 648.571 Failure to return collateral; penalty.—  
 220 (3)  
 221 (c) Allowable expenses incurred in apprehending a defendant  
 222 because of a bond forfeiture or judgment under s. 903.29 may be  
 223 deducted if such expenses are accounted for. The failure to  
 224 return collateral under these terms is punishable as follows:  
 225 1. If the collateral is of a value less than \$100, as  
 226 provided in s. 775.082(4)(a).  
 227 2. If the collateral is of a value of \$100 or more, as  
 228 provided in s. 775.082(3)(e) ~~775.082(3)(d)~~.  
 229 3. If the collateral is of a value of \$1,500 or more, as  
 230 provided in s. 775.082(3)(d) ~~775.082(3)(e)~~.  
 231 4. If the collateral is of a value of \$10,000 or more, as  
 232 provided in s. 775.082(3)(c) ~~775.082(3)(b)~~.

Page 8 of 9

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

7-00151B-14

2014384\_\_

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Section 7. This act shall take effect July 1, 2014.

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-8-2014

Meeting Date

Topic Juvenile Sentencing 2006

Bill Number 384

Name Bill CERVONE

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title STATE ATTORNEY - 8 CIR

(if applicable)

Address 120 W UNIVERSITY AVE

Street

Gainesville

City

FL

State

32601

Zip

Phone 352-374-3686

E-mail bcervone@scsfls.org

Speaking: ☒ For ☐ Against ☐ Information

Representing FLA Pres ATT'Y Assoc

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/8/14  
Meeting Date

Topic Juvenile Sentencing Bill Number SB 384  
Name Nancy Daniels (if applicable)  
Amendment Barcode \_\_\_\_\_ (if applicable)

Job Title Public Defender, 2nd Circuit

Address Leon County Courthouse, 301 S. Monroe St. Phone 850 606-1010  
Tallahassee, FL 32308  
City State Zip

Speaking: ☐ For ☐ Against ☒ Information E-mail nancy.daniels@flpdz.com

Representing Florida Public Defender Association

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1 / 8 / 2014

Meeting Date

Topic \_\_\_\_\_

Bill Number 384  
(if applicable)

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG

FLORIDA

33705

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/20/11)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/9/14

Meeting Date

Topic Juvenile Sentencing

Bill Number SB 384  
(if applicable)

Name David Utter

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Policy Director

Address 4770 Biscayne Blvd  
Street

Phone 334-296-0727

Miami FL  
City State Zip

E-mail david.utter@splcenter.org

Speaking: ☐ For ☒ Against ☐ Information

Representing SPLC

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting**

S-001 (10/20/11)



The Florida Senate

## Committee Agenda Request

**To:** Senator Greg Evers, Chair  
Committee on Criminal Justice

**Subject:** Committee Agenda Request

**Date:** December 9, 2013

---

I respectfully request that **Senate Bill # 360 and Senate Bill # 384**, relating to Sentencing for Controlled Substance Violations and Juvenile Sentencing, be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

A handwritten signature in black ink, appearing to read "Rob Bradley", is written over a horizontal line.

\_\_\_\_\_  
Senator Rob Bradley  
Florida Senate, District 7



**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Criminal Justice

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BILL: SB 448

INTRODUCER: Senator Evers

SUBJECT: Threatened Use of Force

DATE: January 3, 2014

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Cellon	Cannon	CJ	<b>Favorable</b>
2. _____	_____	JU	_____
3. _____	_____	RC	_____

---

**I. Summary:**

SB 448 amends provisions related to self-defense in ch. 776, F.S., to include threatened uses of force. As a result, the criminal and civil immunity provisions apply to those who threaten to use force, so long as the threat was made in a manner and under circumstances that would have been immune under ch. 776, F.S., had force actually been used. Additionally, those who threaten to use force may claim self-defense if the threat was made in a manner and under circumstances that would have been justifiable under ch. 776, F.S., had force actually been used.

The bill also contains the following legislative findings and intent:

- The Legislature finds that persons have been criminally prosecuted and have been sentenced to mandatory minimum terms of imprisonment pursuant to s. 775.087, F.S., for threatening to use force in a manner and under circumstances that would have been justifiable under ch. 776, F.S., had force actually been used.
- The Legislature intends to:
  - Provide criminal and civil immunity to those who threaten to use force if the threat was made in a manner and under circumstances that would have been immune under ch. 776, F.S., had force actually been used;
  - Clarify that those who threaten to use force may claim self-defense if the threat was made in a manner and under circumstances that would have been justifiable under ch. 776, F.S., had force actually been used;
  - Ensure that those who threaten to use force in a manner and under circumstances that are justifiable under ch. 776, F.S., are not sentenced to a mandatory minimum term of imprisonment pursuant to s. 775.087, F.S.; and
  - Encourage those who have been sentenced to a mandatory minimum term of imprisonment pursuant to s. 775.087, F.S., for threatening to use force in a manner and under circumstances that are justifiable under ch. 776, F.S., to apply for executive clemency.

Chapter 776, F.S., contains a variety of provisions setting forth the instances in which a person may use force in self-defense. Currently, ch. 776, F.S., reflects that only a person's *actual* use of force is justifiable – not a person's *threatened* use of force. While some courts have recognized that a threatened use of force equates to an actual use of force, the statutes do not clearly indicate this.

In recent years, there have been cases in which persons have been convicted of aggravated assault for threatening to use force (e.g., displaying a firearm, firing a “warning shot,” etc.) and have been sentenced to mandatory minimum terms of imprisonment pursuant to the 10-20-Life law. In some of these cases, the defendant unsuccessfully argued self-defense. Specifying that the justifications in ch. 776, F.S., apply to threatened uses of force will provide the Legislature's intended clarification.

The bill is effective upon becoming a law.

## **II. Present Situation:**

### **Aggravated Assault**

Assault, a second degree misdemeanor<sup>1</sup> is defined as an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent.<sup>2</sup>

Aggravated assault, a third degree felony,<sup>3</sup> is an assault:

- With a deadly weapon without intent to kill; or
- With an intent to commit a felony.<sup>4</sup>

### **10-20-Life**

Section 775.087, F.S., often referred to as the “10-20-Life” law, requires a judge to sentence a person convicted of specified offenses to a minimum term of imprisonment if, during the commission of the offense, the person possessed or discharged a firearm or destructive device.<sup>5</sup> Under the 10-20-Life law, a person convicted of aggravated assault must be sentenced to:

- A minimum term of imprisonment of 3 years if such person possessed a firearm or destructive device during the commission of the offense;
- A minimum term of imprisonment of 20 years if such person discharged a firearm or destructive device during the commission of the offense; and

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<sup>1</sup> A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

<sup>2</sup> Section 784.011, F.S.

<sup>3</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

<sup>4</sup> Section 784.021, F.S.

<sup>5</sup> The terms “firearm” and “destructive device” are defined in accordance with s. 790.001, F.S.

- A minimum term of imprisonment of not less than 25 years and not more than life in prison if, during course of the commission of the offense, the person discharged a firearm or destructive device and, as the result of the discharge, death or great bodily harm was inflicted upon any person.<sup>6</sup>

### **Justifiable Use of Force**

A person charged with a criminal offense in which force was used (e.g., battery, murder, etc.) may seek immunity from prosecution or may argue at trial that he or she did so in “self-defense.” Chapter 776, F.S., contains a variety of provisions setting forth the instances in which a person may use force in self-defense.

#### ***Use of Force in Defense of Persons***

Section 776.012, F.S., provides that a person is justified in using force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to defend himself or herself or another against the other’s imminent use of unlawful force. However, a person is justified in the use of deadly force and does not have a duty to retreat if:

- He or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony; or
- Under those circumstances permitted pursuant to s. 776.013, F.S.

Section 776.013(3), F.S., also addresses use of force in defense of persons, by specifying that a person does not have a duty to retreat before using force, including deadly force, outside of one’s home so long as the person:

- Was not engaged in an unlawful activity;
- Was in a place where he or she had a right to be; and
- Reasonably believed that doing so was necessary to prevent death or great bodily harm or to prevent the commission of a forcible felony.

#### ***Use of Force in Defense of Property***

Section 776.031, F.S., provides that a person is justified in the use of force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to prevent or terminate the other’s trespass on, or other tortious or criminal interference with, either real property other than a dwelling or personal property, lawfully in his or her possession or in the possession of another who is a member of his or her immediate family or household or of a person whose property he or she has a legal duty to protect. A person is justified in the use of deadly force only if he or she reasonably believes that such force is necessary to prevent the imminent commission of a forcible felony. A person does not have a duty to retreat if the person is in a place where he or she has a right to be.

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<sup>6</sup> Section 775.087(2)(a)1., 2., and 3., F.S.

***Instances When Use of Force is Not Justifiable***

Section 776.041, F.S., specifies that the above-described justifications are not available to a person who:

- Is attempting to commit, committing, or escaping after the commission of, a forcible felony; or
- Initially provokes the use of force against himself or herself, unless:
  - Such force is so great that the person reasonably believes that he or she is in imminent danger of death or great bodily harm and that he or she has exhausted every reasonable means to escape such danger other than the use of force which is likely to cause death or great bodily harm to the assailant; or
  - In good faith, the person withdraws from physical contact with the assailant and indicates clearly to the assailant that he or she desires to withdraw and terminate the use of force, but the assailant continues or resumes the use of force.

Section 776.051, F.S., provides that a person is not justified in the use of force to resist an arrest by a law enforcement officer (LEO), or to resist an LEO who is engaged in the execution of a legal duty, if the LEO was acting in good faith and he or she is known, or reasonably appears, to be an LEO.

**Castle Doctrine Presumptions**

Florida has long recognized that there is no duty to retreat before using force when in one's home (a principle often referred to as the "Castle Doctrine").<sup>7</sup> Section 776.013, F.S., contains the following presumptions relating to the Castle Doctrine.<sup>8</sup>

A person has a reasonable fear of imminent peril or death or great bodily harm to themselves or another when using deadly force when:

- The person against whom the deadly force was used was in the process of unlawfully entering or had unlawfully and forcibly entered, a dwelling, residence, or occupied vehicle, or if that person had removed or was attempting to remove another against that person's will from the dwelling, residence, or occupied vehicle.
- The person using the deadly force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.
- A person who unlawfully and by force enters or attempts to enter a person's dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or violence.

The first presumption listed above does not apply if the person:

- Against whom the defensive force is used has the right to be in or is a lawful resident of the dwelling, residence, or vehicle, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person;

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<sup>7</sup> *Weiland v. State*, 732 So.2d 1044, 1049 (Fla. 1999).

<sup>8</sup> *Id.*

- Sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship of, the person against whom the defensive force is used;
- Who uses defensive force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity; or
- Against whom the defensive force is used is a law enforcement officer who enters or attempts to enter a dwelling, residence, or vehicle in the performance of his or her official duties and the officer identified himself or herself or the person using force knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer.<sup>9</sup>

### ***Immunity***

Section 776.032, F.S., allows for immunity from criminal prosecution<sup>10</sup> and civil action to a person who used force or deadly force, so long as the force was used in accordance with ss. 776.012, 776.013, or 776.031, F.S.<sup>11</sup> A law enforcement agency may use standard procedures for investigating the use of force, but the agency may not arrest the person for using force unless it determines that there is probable cause that the force used was unlawful.<sup>12</sup>

### ***Actual Use of Force vs. Threatened Use of Force***

The above-listed provisions of ch. 776, F.S., reflect that only a person's actual use of force is justifiable but not a person's threatened use of force. While some courts have recognized that a threatened use of force equates to an actual use of force,<sup>13</sup> the statutes do not clearly indicate this.

In recent years, there have been cases in which persons have been convicted of aggravated assault for threatening to use force (e.g., displaying a firearm, firing a "warning shot," etc.) and have been sentenced to mandatory minimum terms of imprisonment pursuant to the 10-20-Life law.<sup>14</sup> In some of these cases, the defendant unsuccessfully argued self-defense.<sup>15</sup> Specifying that the justifications in ch. 776, F.S., apply to threatened uses of force would clarify the issue.

<sup>9</sup> Section 776.013(2), F.S.

<sup>10</sup> "Criminal prosecution" includes arresting, detaining in custody, and charging or prosecuting the defendant. Section 776.032(1), F.S.

<sup>11</sup> Immunity is not granted if the person against whom force was used was a law enforcement officer who was acting in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person was a law enforcement officer. Section 776.032(1), F.S.

<sup>12</sup> Section 776.032(2), F.S.

<sup>13</sup> See, e.g., *Hosnedl v. State*, 2013 WL 5925402 (Fla. 4th DCA 2013)(quoting *State v. Moore*, 729 A.2d 1021, 1029 (N.J.1999)); *Stewart v. State*, 672 So.2d 865 (Fla. 2nd DCA 1996)(the mere display of a gun without more constitutes non-deadly force); and *Miller v. State*, 613 So.2d 530 (Fla. 3rd DCA 1993)(firing a firearm in the air, even as a so-called "warning shot," constitutes as a matter of law the use of deadly force).

<sup>14</sup> For example, 53 year old Orville Wollard was charged with aggravated assault with a deadly weapon after firing a warning shot into a wall in response to his daughter's boyfriend's aggressive behavior towards his daughter (the boyfriend had physically attacked Wollard earlier that day and, upon returning to Wollard's house, shoved Wollard's daughter and punched a hole in the wall). Wollard claimed self-defense but was convicted and sentenced to 20-years pursuant to the 10-20-Life law. <http://famm.org/orville-lee-wollard/> (last visited on November 20, 2013); <http://www.theledger.com/article/20090619/NEWS/906195060> (last visited on November 20, 2013).

<sup>15</sup> *Id.*

### **III. Effect of Proposed Changes:**

The bill amends each of the statutes in ch. 776, F.S., described above to include threatened uses of force. As a result, the criminal and civil immunity provisions apply to those who threaten to use force, so long as the threat was made in a manner and under circumstances that would have been immune under ch. 776, F.S., had force actually been used. Additionally, those who threaten to use force may claim self-defense if the threat was made in a manner and under circumstances that would have been justifiable under ch. 776, F.S., had force actually been used.

The bill also contains the following legislative findings and intent:

- The Legislature finds that persons have been criminally prosecuted and have been sentenced to mandatory minimum terms of imprisonment pursuant to s. 775.087, F.S., for threatening to use force in a manner and under circumstances that would have been justifiable under ch. 776, F.S., had force actually been used.
- The Legislature intends to:
  - Provide criminal and civil immunity to those who threaten to use force if the threat was made in a manner and under circumstances that would have been immune under ch. 776, F.S., had force actually been used;
  - Clarify that those who threaten to use force may claim self-defense if the threat was made in a manner and under circumstances that would have been justifiable under ch. 776, F.S., had force actually been used;
  - Ensure that those who threaten to use force in a manner and under circumstances that are justifiable under ch. 776, F.S., are not sentenced to a mandatory minimum term of imprisonment pursuant to s. 775.087, F.S.; and
  - Encourage those who have been sentenced to a mandatory minimum term of imprisonment pursuant to s. 775.087, F.S., for threatening to use force in a manner and under circumstances that are justifiable under ch. 776, F.S., to apply for executive clemency.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

It is a possibility that the courts, the state attorneys, and defense counsel will experience an increase in litigation at the pre-trial stage of criminal cases because the bill provides a defendant claiming self-defense, who has not actually harmed another person, to seek immunity.

The Department of Corrections could realize a reduction in beds allocated to inmates convicted of aggravated assault if there are fewer convictions due to successful claims of immunity or self-defense.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 776.012, 776.013, 776.031, 776.032, 776.041, and 776.051.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

By Senator Evers

2-00388B-14

2014448\_\_

A bill to be entitled

An act relating to the threatened use of force; providing legislative findings and intent; amending s. 776.012, F.S.; applying provisions relating to the use of force in defense of persons to the threatened use of force; amending s. 776.013, F.S.; applying presumption relating to the use of deadly force to the threatened use of deadly force in the defense of a residence and similar circumstances; applying provisions relating to such use of force to the threatened use of force; amending s. 776.031, F.S.; applying provisions relating to the use of force in defense of property to the threatened use of force; amending s. 776.032, F.S.; applying immunity provisions that relate to the use of force to the threatened use of force; amending s. 776.041, F.S.; applying provisions relating to the use of force by an aggressor to the threatened use of force; providing exceptions; amending s. 776.051, F.S.; providing that a person is not justified in the threatened use of force to resist an arrest by a law enforcement officer; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. (1) The Legislature finds that persons have been criminally prosecuted and have been sentenced to mandatory minimum terms of imprisonment pursuant to s. 775.087, Florida Statutes, for threatening to use force in a manner and under

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circumstances that would have been justifiable under chapter 776, Florida Statutes, had force actually been used.

(2) The Legislature intends to:

(a) Provide criminal and civil immunity to those who threaten to use force if the threat was made in a manner and under circumstances that would have been immune under chapter 776, Florida Statutes, had force actually been used.

(b) Clarify that those who threaten to use force may claim self-defense if the threat was made in a manner and under circumstances that would have been justifiable under chapter 776, Florida Statutes, had force actually been used.

(c) Ensure that those who threaten to use force in a manner and under circumstances that are justifiable under chapter 776, Florida Statutes, are not sentenced to a mandatory minimum term of imprisonment pursuant to s. 775.087, Florida Statutes.

(d) Encourage those who have been sentenced to a mandatory minimum term of imprisonment pursuant to s. 775.087, Florida Statutes, for threatening to use force in a manner and under circumstances that are justifiable under chapter 776, Florida Statutes, to apply for executive clemency.

Section 2. Section 776.012, Florida Statutes, is amended to read:

776.012 Use or threatened use of force in defense of person.—A person is justified in using or threatening to use force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to defend himself or herself or another against the other's imminent use of unlawful force. However, a person is justified in using or threatening to use ~~the use of~~ deadly force

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and does not have a duty to retreat if:

(1) He or she reasonably believes that using or threatening to use such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony; or

(2) Under those circumstances permitted pursuant to s. 776.013.

Section 3. Subsections (1), (2), and (3) of section 776.013, Florida Statutes, are amended to read:

776.013 Home protection; use or threatened use of deadly force; presumption of fear of death or great bodily harm.—

(1) A person is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to himself or herself or another when using or threatening to use defensive force that is intended or likely to cause death or great bodily harm to another if:

(a) The person against whom the defensive force was used or threatened was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, a dwelling, residence, or occupied vehicle, or if that person had removed or was attempting to remove another against that person's will from the dwelling, residence, or occupied vehicle; and

(b) The person who uses or threatens to use defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.

(2) The presumption set forth in subsection (1) does not apply if:

(a) The person against whom the defensive force is used or

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threatened has the right to be in or is a lawful resident of the dwelling, residence, or vehicle, such as an owner, lessee, or titleholder, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person; or

(b) The person or persons sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship of, the person against whom the defensive force is used or threatened; or

(c) The person who uses or threatens to use defensive force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity; or

(d) The person against whom the defensive force is used or threatened is a law enforcement officer, as defined in s. 943.10(14), who enters or attempts to enter a dwelling, residence, or vehicle in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using or threatening to use force knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer.

(3) A person who is not engaged in an unlawful activity and who is attacked in any other place where he or she has a right to be has no duty to retreat and has the right to stand his or her ground and use or threaten to use ~~meet force with force~~, including deadly force if he or she reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another or to prevent the commission of a

2-00388B-14

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117 forcible felony.

118 Section 4. Section 776.031, Florida Statutes, is amended to  
119 read:

120 776.031 Use or threatened use of force in defense of  
121 ~~property others.~~—A person is justified in using or threatening  
122 to use the use of force, except deadly force, against another  
123 when and to the extent that the person reasonably believes that  
124 such conduct is necessary to prevent or terminate the other's  
125 trespass on, or other tortious or criminal interference with,  
126 either real property other than a dwelling or personal property,  
127 lawfully in his or her possession or in the possession of  
128 another who is a member of his or her immediate family or  
129 household or of a person whose property he or she has a legal  
130 duty to protect. However, a the person is justified in using or  
131 threatening to use the use of deadly force only if he or she  
132 reasonably believes that such conduct force is necessary to  
133 prevent the imminent commission of a forcible felony. A person  
134 does not have a duty to retreat if the person is in a place  
135 where he or she has a right to be.

136 Section 5. Subsections (1) and (2) of section 776.032,  
137 Florida Statutes, are amended to read:

138 776.032 Immunity from criminal prosecution and civil action  
139 for justifiable use or threatened use of force.—

140 (1) A person who uses or threatens to use force as  
141 permitted in s. 776.012, s. 776.013, or s. 776.031 is justified  
142 in ~~using~~ such conduct force and is immune from criminal  
143 prosecution and civil action for the use or threatened use of  
144 such force, unless the person against whom force was used or  
145 threatened is a law enforcement officer, as defined in s.

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146 943.10(14), who was acting in the performance of his or her  
147 official duties and the officer identified himself or herself in  
148 accordance with any applicable law or the person using or  
149 threatening to use force knew or reasonably should have known  
150 that the person was a law enforcement officer. As used in this  
151 subsection, the term "criminal prosecution" includes arresting,  
152 detaining in custody, and charging or prosecuting the defendant.

153 (2) A law enforcement agency may use standard procedures  
154 for investigating the use or threatened use of force as  
155 described in subsection (1), but the agency may not arrest the  
156 person for using or threatening to use force unless it  
157 determines that there is probable cause that the force that was  
158 used or threatened was unlawful.

159 Section 6. Subsection (2) of section 776.041, Florida  
160 Statutes, is amended to read:

161 776.041 Use or threatened use of force by aggressor.—The  
162 justification described in the preceding sections of this  
163 chapter is not available to a person who:

164 (2) Initially provokes the use or threatened use of force  
165 against himself or herself, unless:

166 (a) Such force or threat of force is so great that the  
167 person reasonably believes that he or she is in imminent danger  
168 of death or great bodily harm and that he or she has exhausted  
169 every reasonable means to escape such danger other than the use  
170 or threatened use of force which is likely to cause death or  
171 great bodily harm to the assailant; or

172 (b) In good faith, the person withdraws from physical  
173 contact with the assailant and indicates clearly to the  
174 assailant that he or she desires to withdraw and terminate the

Page 6 of 7

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

2-00388B-14

2014448

175 use or threatened use of force, but the assailant continues or  
176 resumes the use or threatened use of force.

177 Section 7. Subsection (1) of section 776.051, Florida  
178 Statutes, is amended to read:

179 776.051 Use or threatened use of force in resisting arrest  
180 or making an arrest or in the execution of a legal duty;  
181 prohibition.—

182 (1) A person is not justified in the use or threatened use  
183 of force to resist an arrest by a law enforcement officer, or to  
184 resist a law enforcement officer who is engaged in the execution  
185 of a legal duty, if the law enforcement officer was acting in  
186 good faith and he or she is known, or reasonably appears, to be  
187 a law enforcement officer.

188 Section 8. This act shall take effect upon becoming a law.

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-8-14  
Meeting Date

Topic 10-20-10fe - Threatened Force

Bill Number 498  
(if applicable)

Name Bill Levine

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title STATE ATT'Y - 8010

Address 120 W UNIV AVE  
Street  
Dainessville FL 32601  
City State Zip

Phone 352-374-3686

E-mail levine@flsenate.org

Speaking: ☐ For ☐ Against ☒ Information

Representing Fla Pres Att, Assoc

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/8/14

Meeting Date

Topic \_\_\_\_\_

Name Amy Dyer

Job Title Retired

Address 1130 Crestview Ave

Street

City

Tallahassee FL

State

Zip

32303

Speaking: ☒ For ☐ Against ☐ Information

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

Bill Number 448  
(if applicable)

Amendment Barcode \_\_\_\_\_  
(if applicable)

Phone 850 322-7599

E-mail amydyer@att.net  
com

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

**This form is part of the public record for this meeting.**

S-001 (10/20/11)

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

TESTIFY LAST PLEASE

\* Needs a min. of  
SB-448 3 min  
Bill Number

1-8-14

Date

Name

MARION HAMMER

Phone

222-9518

Address

P.O. BOX 1387

E-mail

Street

TALLAHASSEE

FL

32302

City

State

Zip

Job Title

Speaking:

☒

For

☐

Against

☐

Information

Appearing at request of Chair

☐

Subject

Representing

NRA & UNIFIED SPORTSMEN OF FLORIDA

Lobbyist registered with Legislature:

☒

Yes

☐

No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee:

Time:

from

\_\_\_\_.m.

to

\_\_\_\_.m.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/8/14

Meeting Date

Topic Threatened Use of Force Act

Bill Number SB 448  
(if applicable)

Name Greg Newburn

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Florida Project Director

Address PO Box 142933  
Street

Phone 352.682.2542

Gainesville, FL 32614  
City State Zip

E-mail gnewburn@famm.org

Speaking: ☒ For ☐ Against ☐ Information

Representing Families Against Mandatory Minimums

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1 / 8 / 2014

*Meeting Date*

Topic \_\_\_\_\_

Bill Number 448  
*(if applicable)*

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH  
*Street*

Phone 727-897-9291

SAINT PETERSBURG FLORIDA 33705  
*City State Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☒ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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S-001 (10/20/11)



THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-8-14

Meeting Date

Topic Self Defense

Bill Number SB 448

Name Eric Friday

(if applicable)

Job Title Lead Counsel Florida Carry

Amendment Barcode \_\_\_\_\_  
(if applicable)

Address 541 E Monroe St

Phone 904-353-7733

Street

Jacksonville

FL

32202

City

State

Zip

E-mail efriday@fletcher and  
phillips.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Carry

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

01-08-14

*Meeting Date*

Topic Threatened Use of Force

Bill Number SB 448

*(if applicable)*

Name Paul Henry

Amendment Barcode \_\_\_\_\_

*(if applicable)*

Job Title \_\_\_\_\_

Address PO Box 698

Phone 850-629-9550

*Street*

Monticello

FL

32345

*City*

*State*

*Zip*

E-mail realid@liberty2010.org

Speaking: ☒ For ☐ Against ☐ Information

Representing Liberty First Network

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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S-001 (10/20/11)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

*Meeting Date* \_\_\_\_\_

Topic "WARNING SHOT" Bill Number 448  
Name STACY SCOTT (if applicable)  
Job Title Elected Public Defender, 8<sup>th</sup> Circuit Amendment Barcode \_\_\_\_\_ (if applicable)  
Address 35 N. Main ST Phone 352-338 7386  
*Street* Gainesville FL 32605 E-mail scott3@pd8.org  
*City* *State* *Zip*  
Speaking: ☒ For ☐ Against ☐ Information  
Representing Public Defenders  
Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☐ Yes ☒ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/20/11)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

---

Prepared By: The Professional Staff of the Committee on Criminal Justice

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BILL: SPB 7006

INTRODUCER: For consideration by the Criminal Justice Committee

SUBJECT: Criminal Justice

DATE: January 2, 2014

REVISED: 01/08/14

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Sumner	Cannon		<b>Submitted as Committee Bill</b>

---

**I. Summary:**

SPB 7006 amends s. 944.70, F.S., to include additional conditions for releasing inmates from incarceration. The bill would require the Department of Corrections (DOC) to verify the authenticity of court orders that change a person's release date to an earlier date before releasing the person from incarceration, unless the order received from the clerk of court is accompanied by a confirmation from the issuing judge or authorized designee.

**II. Present Situation:**

**Current Law Relating to When DOC May Release an Inmate**

The current law requires that DOC may only release an inmate after it has received the court's written order from the Clerk of Court. The Clerk of Court is the custodian of the judicial record. There are three ways the Clerk of Court receives sentencing and modification orders:

- From a non-secure drop box or mail
- Secured direct pick up from the Courts
- In Court directly from the judge<sup>1</sup>

Section 944.70, F.S., provides that persons who are convicted of a crime committed on or after October 1, 1983, but before January 1, 1994, may be released from incarceration only upon the following conditions:

- Expiration of the person's sentence;
- Expiration of the person's sentence as reduced by accumulated gain-time;
- As directed by an executive order granting clemency;
- Attaining the provisional release date;
- Placement in a conditional release program pursuant to s. 947.1405, F.S.; or

---

<sup>1</sup> PowerPoint presentation from Florida Court Clerks & Comptrollers.

- Granting of control release pursuant to s. 947.146, F.S.

A person who is convicted of a crime committed on or after January 1, 1994, may be released from incarceration only upon the following conditions:

- Expiration of the person's sentence;
- Expiration of the person's sentence as reduced by accumulated meritorious or incentive gain-time;
- As directed by an executive order granting clemency;
- Placement in a conditional release program pursuant to s. 947.1405, F.S., or a conditional medical release program pursuant to s. 947.149, F.S.; or
- Granting of control release, including emergency control release, pursuant to s. 947.146, F.S.

### **Background on Recent Incidents Using Fraudulent Orders**

In a July 2, 2013 e-mail, Michael R. Ramage, General Counsel for the Florida Department of Law Enforcement (FDLE) notified DOC that inmates with long sentences had recently attempted to secure reduction of sentences through use of fraudulent court orders. He stated that the "scheme" involved preparation of legitimate looking orders that are filed in the court and then presented to the Department of Corrections or others to secure a reduction of sentence. He further stated that in one case an inmate was actually released. Though the inmate was captured Ramage requested DOC's help in getting the word out and that "the best success in curbing his abuse is through greater awareness on everyone's part."

In late August and September of 2013 Joseph Jenkins and Charles Walker were released from Franklin County Correctional Institution after the Department of Corrections received fraudulent release documents from the Orange County Clerk of Court. The FDLE along with Bay County Sheriff's Office, Panama City Police Department, and the U.S. Marshals Service Task Force arrested both inmates on October 19, 2013.<sup>2</sup> An FDLE investigation revealed that the release was part of a larger conspiracy involving six current and former Department of Corrections inmates.

In both the November 4, 2013 Senate Criminal Justice Committee Meeting and the November 6, 2013 Senate Appropriations Subcommittee on Criminal and Civil Justice Committee Meeting, there was a briefing by FDLE, DOC, the Clerk of Courts and the State Attorneys on remedial actions that were taken based on the recent escapes and the use of fraudulent sentencing modification documents.

The FDLE's Commissioner, Gerald Bailey, testified before the Senate that the release of the inmates continued to be part of an ongoing investigation. Bailey further testified that due to lack of good audit trails, the investigation is still underway to determine how the documents got to the Clerk's office. Bailey revealed that confidential sources from inmates were saying the documents came from inside the prison and nothing shows that any employees from the Orange County Clerk's Office were involved.<sup>3</sup>

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<sup>2</sup> December 19, 2013 News Release, Florida Department of Law Enforcement.

<sup>3</sup> November 4, 2013 Senate Criminal Justice Committee and the November 6, 2013 Senate Appropriations Subcommittee on Criminal and Civil Justice.

Lee Adams, Chief of the Bureau of Admission and Release at the Department of Corrections gave a PowerPoint presentation on fraudulent court orders. During the presentation, Chief Adams stated that the fundamental duty of the DOC is to execute sentencing orders by calculating release dates. When the lawful sentence ends the DOC no longer has the authority to hold the inmate and the inmate has a constitutional right to be at liberty. He stated that DOC's proof of lawful detention is based solely on the court's written order.

Chief Adams stressed that there is a presumption of validity of the Order on which the department relies. Adams explained that during the standard release process there is a 180 day time period from the comprehensive record review, contact with a social service provider and the final release phase. He explained that there is also an immediate release process that takes only two hours but with the same safeguards in place.

Since January 2010, Chief Adams reported that there were 61 life sentences for murder, attempted murder, or manslaughter that were reduced or vacated. During FY 2012-13, there were over 4,100 court orders. It was noted that DOC does not evaluate the legality of the order; however, it does recognize and seek clarification of discrepancies involving the factual record and internal inconsistencies within orders.

A PowerPoint presentation by the Florida Court Clerks and Comptrollers set forth its proposed strategies for fraud prevention in document processing to:

- Establish a secure process for delivery of documents between the Judge and the Clerk
- Establish a secure location in a non-public work area to process documents
- Establish a secure process for delivery/receiving documents from the State Attorney and local detention/jail facilities

An additional step in verification procedures also discussed included having the Clerk review Orders for unusual circumstances including unusual signatures, incorrect spellings, and incorrect court type or document style.

Statewide forms for notifying the Court, a uniform procedure for filing such notification forms, and an adoption of uniform procedure of notification to DOC of order verification were also proposed.

### **Recent Developments in E-Filing Court Documents**

E-filing standards have been mandated by the Supreme Court for February 3, 2014 filings in criminal cases. The Supreme Court has begun discussions at the statewide level for judges to use the e-portal for their orders. This would provide the capacity to authenticate judicial orders through secured electronic transmission from the Court.

### **III. Effect of Proposed Changes:**

SPB 7006 amends s. 944.70, F.S., to include additional conditions for releasing inmates from incarceration. The bill would require the Department of Corrections (DOC) to verify the

authenticity of court orders that change a person's release date to an earlier date before releasing the person from incarceration, unless the order received from the clerk of court is accompanied by a confirmation from the issuing judge or authorized designee.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

DOC may experience additional workload as a result of this bill. It is anticipated to be insignificant.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 944.70 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

---

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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417664

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
01/08/2014	.	
	.	
	.	
	.	

---

The Committee on Criminal Justice (Evers) recommended the following:

**Senate Amendment (with title amendment)**

Delete line 16  
and insert:  
releasing the person from incarceration, unless the order  
received from the clerk of court is accompanied by a  
confirmation from the issuing judge or authorized designee  
verifying the authenticity of the order.

===== T I T L E   A M E N D M E N T =====



417664

11 And the title is amended as follows:  
12       Delete line 6  
13 and insert:  
14       providing an exception; providing an effective date.

FOR CONSIDERATION By the Committee on Criminal Justice

591-00812-14

20147006\_\_

A bill to be entitled

An act relating to criminal justice; amending s.  
944.70, F.S.; requiring the Department of Corrections  
to verify the authenticity of certain court orders  
before releasing a person from incarceration;  
providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (3) is added to section 944.70,  
Florida Statutes, to read:

944.70 Conditions for release from incarceration.—

(3) If a court order has the effect of changing a person's  
release date to an earlier date, the department must verify the  
authenticity of the order with the issuing judge before  
releasing the person from incarceration.

Section 2. This act shall take effect July 1, 2014.

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

*Meeting Date* \_\_\_\_\_

Topic DOC

Name Bob Dillinger

Job Title P.D. 6<sup>th</sup> Circuit

Address 14250 49<sup>th</sup> St N

*Street*

CLW 71 33742

*City*

*State*

*Zip*

Speaking: ☒ For ☐ Against ☐ Information

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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***This form is part of the public record for this meeting.***

Bill Number 7004  
*(if applicable)*

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Phone 727-464-1284

E-mail pd6@warpthehype.com

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/8/14

Meeting Date

Topic

Dept of Corrections / Crim. Justice  
Orders

Bill Number

SPB-7006

(if applicable)

Name

Lisa Goodner

Amendment Barcode

(if applicable)

Job Title

State Courts Administrator

Address

500 South Duval St.

Street

Tallah, FL 32399

City

State

Zip

Phone

(850)922-5081

E-mail

goodnerl@flcourts.org

Speaking:

☐

For

☐

Against

☒

Information

Representing

State Courts System

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1 / 8 / 2014

*Meeting Date*

Topic \_\_\_\_\_

Bill Number 7006  
*(if applicable)*

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

*Street*

SAINT PETERSBURG FLORIDA 33705  
*City State Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/8/14  
Meeting Date

Topic Fraudulent Documents

Bill Number SPB 7006  
(if applicable)

Name Fred Baggett

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Attorney

Address 101 E. College Ave.  
Street

Phone 475 8512

Tallahassee  
City State Zip

E-mail BaggettF@GTlaw.com

Speaking: ☐ For ☐ Against ☒ Information

Representing Fl. Assoc. of Court Clerks

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Banking and Insurance, *Chair*  
Appropriations Subcommittee on Education  
Appropriations Subcommittee on Finance and Tax  
Criminal Justice  
Education  
Governmental Oversight and Accountability  
Rules

### SELECT COMMITTEE:

Select Committee on Patient Protection  
and Affordable Care Act

**SENATOR DAVID SIMMONS**

10th District

January 8, 2014

Senator Greg Evers  
308 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Senator Evers:

I would like to respectfully request to be excused from the Wednesday, January 8, 2014 meeting of Criminal Justice Committee. I had an urgent business matter come up that requires me to stay in Orlando that morning.

Sincerely yours,

A handwritten signature in black ink, appearing to read "David Simmons", with a stylized flourish at the end.

David Simmons

### REPLY TO:

- ☐ 251 Maitland Avenue, Suite 304, Altamonte Springs, FL 32701 (407) 262-7578
- ☐ 406 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5010

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore





## THE FLORIDA SENATE

### SENATE DEMOCRATIC OFFICE

*Theresa Frederick, Staff Director*  
200 Senate Office Building

*Mailing Address*  
404 South Monroe Street  
Tallahassee, Florida 32399-1100  
(850) 487-5833

**CHRISTOPHER L. SMITH**  
*Democratic Leader*

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**MARIA LORTS SACHS**  
*Democratic Leader Pro Tempore*

January 8, 2014

The Honorable Greg Evers, Chairman  
Committee on Criminal Justice  
Room 510 Knott Building  
404 South Monroe Street  
Tallahassee, Florida 32399-1100

Dear Chairman Evers:

I respectfully request that I be excused from today's Criminal Justice Committee meeting. As you know, it is difficult to obtain a direct flight to Tallahassee from Ft. Lauderdale. Unfortunately, I fell victim to a delayed connection from Atlanta to Tallahassee to this morning due to the weather and will not be arriving in Tallahassee until later today.

Your consideration of my request would be greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Smith", written over a horizontal line.

Christopher L. Smith, Senate Democratic Leader

# CourtSmart Tag Report

Room: LL 37  
Caption: Senate Criminal Justice

Case:  
Judge:

Type:

Started: 1/8/2014 9:13:34 AM  
Ends: 1/8/2014 10:56:48 AM Length: 01:43:15

9:13:35 AM Chair Evers calls the meeting to order  
9:13:45 AM roll call  
9:13:52 AM quorum present  
9:14:04 AM Chair Evers shows SB 152 by Senator Grimsley as temporarily postponed  
9:15:03 AM Senator Gibson congratulates FSU  
9:15:45 AM Confirmation hearing for Michael Crews, Secretary, Dept of Corrections  
9:16:49 AM Chair Evers administers oath  
9:17:01 AM Secretary Crews makes comments to committee  
9:28:25 AM Chair Evers asks Secretary Crews a question about inmate escapes  
9:29:25 AM Secretary Crews responds  
9:31:10 AM Chair Evers comments  
9:32:09 AM Senator Dean comments  
9:33:25 AM Chair Evers comments and asks another question  
9:34:29 AM Secretary Crews responds on the department's deficit and living within their means  
9:40:17 AM Senator Dean commends Secretary Crews on his plans  
9:41:38 AM Senator Dean moves the favorable recommendation to confirm  
9:42:38 AM roll call  
9:42:48 AM CS/SB 224 presented by Senator Benacquisto  
9:43:48 AM Chair Evers asks question  
9:44:08 AM Senator Benacquisto answers  
9:44:16 AM Seeing no debate, Senator Benacquisto waives close  
9:44:51 AM roll call on CS/SB 224  
9:45:01 AM CS/SB 224 reported favorable  
9:45:41 AM SB 448 by Senator Evers  
9:45:52 AM Dave Murzin presents bill  
9:47:34 AM Senator Bradley asks question for Rep. Combee  
9:48:37 AM Senator Dean asks question  
9:49:38 AM Representative Combee responds  
9:49:59 AM Senator Dean clarifies  
9:50:32 AM Chair Evers refers question to Connie on Criminal Justice staff  
9:50:57 AM Connie answers  
9:51:53 AM Representative Combee makes statement regarding idea of the bill  
9:52:43 AM Senator Gibson asks question  
9:53:27 AM Representative Combee responds  
9:54:08 AM Senator Gibson with a follow-up  
9:55:24 AM Chair Evers responds  
9:56:11 AM Stacy Scott, representing Public Defenders, speaks in favor of bill  
9:57:23 AM Paul Henry, Liberty First Network, speaks in favor of bill  
9:58:57 AM Eric Friday, Florida Carry, speaks in favor of bill  
10:01:26 AM Chair Evers comments on intent of bill  
10:01:40 AM Senator Gibson asks a question about how charges are filed in a "warning shot" case  
10:03:19 AM Mr. Friday responds  
10:04:46 AM Greg Newborn, Families Against Mandatory Minimums, speaks in favor of bill  
10:08:05 AM Senator Dean asks question regarding records of dismissed case  
10:09:06 AM Mr. Newborn answers  
10:09:14 AM Senator Dean comments  
10:09:17 AM Chair Evers comments  
10:09:37 AM Senator Dean makes suggestion for bill  
10:09:55 AM Chair Evers asks question of Senator Dean  
10:10:43 AM Senator Dean responds  
10:11:06 AM Marion Hammer, NRA & Unified Sportsmen of Florida, speaks in favor of bill  
10:14:44 AM Amy Datz speaks in favor of bill

10:16:01 AM Bill Cervone, Court Prosecuting Attorney Association, speaks on bill  
 10:17:28 AM Chair Evers comments  
 10:18:02 AM Mr. Cervone responds  
 10:20:18 AM Chair Evers responds  
 10:21:23 AM Representative Combee speaks on bill  
 10:22:36 AM Senator Dean makes comment  
 10:23:28 AM Dave Murzin waives close  
 10:23:41 AM roll call on SB 448  
 10:23:47 AM SB 448 reported favorable  
 10:24:23 AM Consideration of proposed committee bill 7006  
 10:25:27 AM SPB 7006 explained by Tracy Sumner of staff  
 10:25:47 AM Amendment 417664 explained by Tracy Sumner  
 10:26:14 AM Amendment adopted  
 10:26:19 AM Senator Gibson asks question  
 10:26:50 AM Ms. Sumner answers question  
 10:28:21 AM Bob Dillinger speaks in favor of bill  
 10:28:59 AM Brian Pitts, Justice-2-Jesus, speaks on bill  
 10:32:42 AM Senator Gibson moves to submit SPB 7006 as committee bill  
 10:33:35 AM roll call  
 10:33:45 AM SPB 7006 reported favorably  
 10:33:59 AM SB 360 by Senators Bradley and Evers  
 10:34:39 AM Senator Bradley explains bill  
 10:35:44 AM Senator Gibson asks for clarification  
 10:36:17 AM Senator Bradley responds  
 10:36:24 AM Senator Dean makes statement  
 10:38:11 AM Senator Bradley responds  
 10:38:27 AM Greg Newburn, Families Against Mandatory Minimums, speaks in favor of bill  
 10:40:12 AM Individuals waive in support  
 10:41:21 AM Senator Gibson in debate on the bill regarding minimum mandatory sentences  
 10:42:05 AM Senator Bradley closes on SB 360  
 10:43:05 AM roll call  
 10:43:08 AM SB 360 reported as favorable  
 10:43:29 AM SB 384 by Senator Bradley  
 10:43:46 AM Senator Bradley explains bill  
 10:45:38 AM Senator Gibson asks about the differences between last year's bill on the same subject and the current bill  
 10:46:38 AM Senator Bradley answers  
 10:48:01 AM Senator Gibson with a follow-up  
 10:48:14 AM Senator Bradley answers  
 10:49:04 AM Senator Gibson asks why the bill is only retroactive for one and not the other  
 10:49:45 AM Senator Bradley responds  
 10:50:56 AM David Utter, SPLC, speaks against the bill  
 10:52:14 AM Brian Pitts, Justice-2-Jesus, speaks on bill  
 10:53:55 AM Senator Bradley moves for a time certain vote  
 10:54:16 AM Nancy Daniels, Florida Public Defender Association, speaks on bill  
 10:55:12 AM Senator Bradley waives close  
 10:55:35 AM roll call on SB 384  
 10:55:42 AM SB 384 reported favorably  
 10:55:50 AM Senator Gibson moves we rise